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PART VI.

BILLS OF THE GOVERNMENT OF INDIA.

LEGISLATIVE DEPARTMENT.

The following Bill was introduced into the Council of the Governor General of India for the purpose of making Laws and Regulations on the 19th March, 1886, and was referred to a Select Committee :—

Bill No. 5 of 1886.

THE GUARDIANS AND WARDS BILL, 1886.

CONTENTS.

The Guardians and Wards Bill, 1886.

(Chapter II.—Appointment of Guardians.—Sections 12-17.)

(Chapter III.—Duties, Rights and Liabilities of Guardians.—Sections 18-19.)

[Act IX, 1861, s. 2, and Act XIII, 1874, s. 6.]

12. The Court may direct that the person (if any) having the custody of the minor shall produce him at such place and time as it appoints, and may make such order for the temporary custody and protection of the person or property of the minor as it thinks proper.

Power to make interlocutory order for production of minor and interim protection of his person and property.

[Act IX, 1861, s. 3 and Act XIII, 1874, s. 7.]

13. On the day fixed for the hearing of the application, or as soon afterwards as may be, the Court shall hear such evidence as may be adduced in support of or in opposition to the application.

Hearing of evidence before making of order.

[Act XIII, 1874, s. 21.]

14. (*1*) If the law to which the minor is subject admits of his having two or more joint guardians of his person or property, or both, the Court may, if it thinks fit, appoint or declare them.

Appointment of several guardians.

(*2*) Separate guardians may be appointed or declared of the person and of the property of a minor.

[Act XIII, 1874, s. 4.]

(*3*) If a minor has several properties, the Court may, if it thinks fit, appoint or declare a separate guardian for any one or more of the properties.

[Act XIII, 1874, s. 4.]

(*4*) If the Court appoints or declares a guardian for any property situate beyond the local limits of its jurisdiction, the Court having jurisdiction in the place where the property is situate shall accept the guardian as duly appointed or declared and give effect to the order appointing or declaring him.

[Act XIII, 1874, s. 10].

15. (*1*) In appointing or declaring the guardian of a minor the Court shall be guided by the law to which the minor is subject and by what appears to be, consistently with that law, for the best interest of the minor with respect to his mental, moral and temporal welfare.

Matters to be considered by the Court in appointing guardian.

(*2*) In considering what will be for the best interest of the minor, the Court shall have regard to his age, his relationship to the proposed guardian, the wishes of a deceased parent (if any), and any existing or previous connection of the proposed guardian with the person or property of the minor.

(*3*) If the minor is old enough to form an intelligent preference, the Court may consider that preference.

X of 1885.

(*4*) In the case of persons to whom the Indian Succession Act, 1865, applies, as between parents adversely claiming the guardianship, neither parent is entitled to it as of right: but other things being equal in such case, if the minor is of tender years, he should be given to the mother, and if he is of an age to require education and preparation for labour and business, then to the father.

(*5*) Where the minor is a member of an undivided Hindu family, special weight is to be attached to any claim which the managing member of the family may make to be appointed or declared guardian, and to any objection which he may take to an appointment or declaration asked for in an application. [New.]

(*6*) The Court shall not appoint a person to be guardian against his will.

[Act XL, 1858, s. 27: Act XX. 1864, s. 31: Act XIII, 1874, s. 25: and Act XVII, 1885, s. 8.]

16. Nothing in this Chapter shall authorise the Court to appoint or declare a guardian of the person of a minor—

Guardian of the person not to be appointed by the Court in certain cases.

(*a*) who is a married female cohabiting with her husband, or

(*b*) whose father is living and is not a minor or, in the opinion of the Court, unfit to perform, or incapable of performing, the duties of a guardian of the person of the minor, or

(*c*) whose property is under the superintendence of a Court of Wards competent to appoint a guardian of his person.

[New.]

17. Where under this Chapter the Court appoints or declares a guardian of the property of a minor who is a member of an undivided Hindu family, it shall, except where it is proved to the satisfaction of the Court that the interests of the minor have been actually imperilled, appoint or declare the guardian subject to such restrictions as will prevent him from interfering with the powers of the managing member of the family.

Guardian of property to be appointed by the Court subject to restrictions in case of certain minors.

CHAPTER III.

DUTIES, RIGHTS AND LIABILITIES OF GUARDIANS.

General.

[Seton's Decrees, 739, and Act XIII, 1874, s. 18.]

18. (*1*) A guardian must act for the benefit of his ward.

Fiduciary relation of guardian to ward.

(*2*) He cannot make any profit out of his office.

(*3*) With respect to the property of the ward, he stands in the position of trustee for the ward, and is responsible for any loss occasioned to the property by his wilful default or gross negligence.

(*4*) This fiduciary relation extends to and affects purchases by a guardian of the property of his ward immediately or soon after the ward has ceased to be a minor, and generally all transactions between them while the influence of the guardian still lasts or is recent.

[Act XIII, 1874, s. 19.]

19. A minor is incompetent to act as guardian.

Minor incompetent to act.

The Guardians and Wards Bill, 1886.

(Chapter III.—Duties, Rights and Liabilities of Guardians.—Sections 20-25.)

Guardian of the Person.

[Act XIII, 1874, ss. 11 and 12.]

20. A guardian of the person of a ward is charged with the custody of the ward, and must look to his support, health and education, and such other matters as the law to which the ward is subject requires.

Duties of guardian of the person.

[Act XIII, 1874, s. 13.]

21. (*1*) If a ward leaves the custody of his guardian, he may be compelled by order of the Court to return to that custody.

Title of guardian to custody of ward.

(*2*) But the Court may refuse to make an order for his return to the custody of the guardian if it appears—

(*a*) that the ward has been ill-treated by the guardian; or

(*b*) that the conduct of the guardian in any other respect has rendered him unfit to have the custody of the ward; or

(*c*) that the ward is, on reasonable grounds not inconsistent with the law to which he is subject, unwilling to return, and, having attained to years of discretion, is capable of exercising a wise choice as to the custody in which he will remain.

[Eversley's Domestic Relations, 691-92.]

(*3*) The residence of a ward against the will of his guardian with a person who is not his guardian does not of itself terminate the guardianship.

[Act XIII, 1874, s. 14.

22. (*1*) A guardian of the person appointed or declared by the Court shall not, without the leave of the Court by which he was appointed or declared, remove the ward from the limits of its jurisdiction, except for such temporary purposes as may be prescribed or for the purpose of placing him beyond those limits at an educational institution appointed by the Local Government administering the territories within which the Court is established as an institution to which a guardian may send a ward without the leave of the Court.

Removal of ward from jurisdiction.

(*2*) The leave granted by the Court under sub-section (*1*) may be special or general, and may be defined by the order granting it.

Guardian of Property.

Act XIII, 1874, s. 15.]

23. (*1*) A guardian of the property of a ward must keep that property safely.

Duties of guardian of property.

(*2*) In the case of immoveable property, he must not suffer any waste, but must maintain the buildings (if any) thereon and their appurtenances out of the rents and profits of the property.

[Act XL, 1858, s. 18: Act XX, 1864, s. 18: and Act XIII, 1874, s. 16.]

24. Where a guardian of the property, of a ward has been appointed or declared by the Court, he shall not, without the previous permission of the Court,—

Limitation of powers of guardian of property appointed or declared by the Court.

(*a*) borrow for his ward; or

(*b*) mortgage, charge or transfer by sale, gift, exchange or otherwise any part of the immoveable property of his ward; or

(*c*) lease any part of that property for a term exceeding three years; or

(*d*) transfer any Government securities belonging to the ward, or the shares or other interest of the ward in any company; or

(*e*) dispose of any other part of the principal of the property of the ward:

Provided that the Court may, subject to any rules made by the High Court under this Act, exempt a guardian from the necessity of obtaining the permission of the Court under this section, either generally or in special circumstances, and as to either the whole or any specified part of the property of the ward. [Cf. Act V, 1881, s. 90.]

25. (*1*) Permission to the guardian to do any of the acts mentioned in the last foregoing section shall not be granted by the Court except in case of necessity or for an evident advantage to the ward. [New.]

Practice with respect to limitation of powers of guardian of property.

(*2*) The order granting the permission shall recite the necessity or advantage, as the case may be, describe the property with respect to which the act permitted is to be done, and specify such conditions, if any, as the Court may see fit to attach to the permission; and it shall be recorded dated and signed by the Judge of the Court with his own hand, or, when from any cause he is prevented from recording the order with his own hand, shall be taken down in writing from his dictation and be dated and signed by him. [New.]

(*3*) The Court may in its discretion attach to the permission the following among other conditions, namely:— [New.]

(*a*) that a sale shall be made to the highest bidder by public auction, before the Court or some person specially appointed by the Court for that purpose, at a time and place to be specified by the Court, after such proclamation of the intended sale as the Court, subject to any rules made by the High Court under this Act, directs;

(*b*) that a lease shall not be made in consideration of a premium, or shall be made for such term of years and subject to such rents and covenants as the Court directs;

(*c*) that the whole or any part of the proceeds of the act permitted shall be paid into the Court by the guardian to be invested by the Court on prescribed securities or otherwise disposed of as the Court directs.

(*4*) Before granting permission to a guardian to do an act mentioned in the last foregoing section the Court may cause notice of the application for the permission to be given to any relative [New.]

The Guardians and Wards Bill, 1886.

(Chapter III.—Duties, Rights and Liabilities of Guardians.—Sections 26-31.)

or friend of the ward who should, in its opinion, receive notice thereof, and shall hear, and record the statement of, any person who appears in opposition to the application.

[Act XL, 1858, s. 2: Act XX, 1864, s. 1: and Act XIII, 1874, s. 20.]

General powers of guardian of property.

26. (*1*) Where a guardian of the property of a ward has been appointed or declared by the Court, the Court may from time to time, by order, define, restrict or extend his powers with respect to the property of the ward in such manner and to such extent as it may consider to be for the advantage of the ward and consistent with the law to which the ward is subject.

(*2*) Subject to any such order and subject also to sections 17 and 24, a guardian appointed by or under a will or other instrument shall, with respect to the property of his ward, have such powers and be subject to such restrictions as are conferred or imposed on him by that instrument.

[Act II, 1882, s. 36.]

(*3*) Subject to the foregoing provisions of this section, a guardian of the property of a ward may do all acts which are reasonable and proper for the realization, protection or benefit of the property of the ward and are allowed by the law to which the ward is subject.

[Act II, 1882, s. 34.]

Right of guardian to apply to the Court for opinion in management of property of ward.

27. (*1*) A guardian may apply by petition to the Court for its opinion, advice or direction on any present questions respecting the management or administration of the property of his ward, other than questions not proper, in the opinion of the Court for summary disposal.

(*2*) A copy of the petition shall be served upon, and the hearing thereof may be attended by, such of the persons interested in the application as the Court thinks fit.

(*3*) The guardian stating in good faith the facts in the petition and acting upon the opinion, advice or direction given by the Court shall be deemed, so far as regards his own responsibility, to have discharged his duty as guardian in the subject-matter of the application.

[Act XIII, 1874, s. 18.]

Obligations on, and privileges of, guardian of property.

28. Where a guardian of the property of a ward has been appointed or declared by the Court, he shall—

[Act X, 1865, s. 256, and Act V, 1881, s. 78.]

(*a*) if so required by the Court, give a bond, as nearly may be in the prescribed form, to the Judge of the Court to enure for the benefit of the Judge for the time being, with or without sureties, as may be prescribed, engaging duly to account for what he may receive in respect of the property of the ward;

[Act XL, 1858, s. 16, and Act XX, 1864, s. 16.]

(*b*) deliver to the Court, within six months from the date of his appointment or declaration by the Court, or within such shorter time as the Court directs, a statement of the immoveable property belonging to the ward, of the money and other moveable property which he has received on behalf of the ward up to the date of delivering the statement, and of the debts due on that date to or from the ward;

[Act XL, 1858, s. 16, and Act XX, 1864, s. 16.]

(*c*) exhibit his accounts in the Court at such times and in such form as the Court directs;

[Act XL, 1858, s. 17, and Act XX, 1864, s. 17.]

(*d*) if the Court so directs, pay into the Court the balance due from him on those accounts, or so much thereof as the Court directs, in the manner in which money is required by any rules for the time being in force to be paid into that Court;

[Act XL, 1858, s. 11: Act XX, 1864, s. 10: and Act XIII, 1874, s. 17.]

(*e*) apply for the maintenance, education and advancement of the ward such portion of the income of the property of the ward as the Court directs, and, if the Court so directs, the whole or any part of the principal of that property; and

[Act XL, 1858, s. 24, and Act XX, 1864, s. 24.]

(*f*) be entitled to such allowance, if any, as the Court thinks fit for his care and pains in the execution of his duties.

[Act X, 1865, s. 257, and Act V, 1881, s. 79, I. L. R. 5 All. 248.]

Suit against guardian where administration-bond was taken.

29. Where a guardian has given a bond duly to account for what he may receive in respect of the property of his ward, the Court may any time, on being satisfied that the engagement of the bond has not been kept, and upon such terms as to security, or providing that the money received be paid into the Court, or otherwise, as the Court thinks fit, assign the bond to some proper person, who shall thereupon be entitled to sue on the bond in his own name as if the bond had been originally given to him instead of to the Judge of the Court, and shall be entitled to recover thereon, as trustee for the ward, the full amount recoverable in respect of any breach thereof.

[Act XL, 1858, s. 19, and Act XX, 1864, s. 19.]

Suit against guardian where administration-bond was not taken.

30. Where a guardian has not given a bond as aforesaid, any person, with the leave of the Court, may, as next friend, at any time during the continuance of the minority of the ward, and upon such terms as aforesaid, institute a suit against the guardian, or, in case of his death, against his legal representive, for an account of what the guardian has received in respect of the property of the ward, and may recover in the suit, as trustee for the ward, the full amount found in the suit to have been received by the guardian and not to have been duly accounted for.

[Act XL, 1858, s. 19, and Act XX, 1864, s. 19.]

General liability of guardian as trustee.

31. Nothing in either of the last two foregoing sections shall be construed to deprive a ward or his legal representative of any remedy against his guardian, or the legal representative of the guardian, which, not being expressly provided in either of those sections, any other beneficiary or his legal representative would have against his trustee or the legal representative of the trustee.

The Guardians and Wards Bill, 1886.

(Chapter III.—Duties, Rights and Liabilities of Guardians.—Sections 32-35.)

(Chapter IV.—Supplemental Provisions.—Sections 36-38.)

Termination of Guardianship.

[Act XIII, 1874, s. 21.]

Right of survivorship among joint guardians.

32. On the death of one of two or more joint guardians, the guardianship continues to the survivor or survivors until a further appointment is made by the Court.

[ActXL, 1858, s. 21: Act XX, 1864, s. 21: and Act XIII, 1874, ss. 22 and 24.]

Removal of guardian.

33. (*1*) The Court may, on the application of any person interested, or of its own motion, remove a guardian for any of the following causes, namely:—

(*a*) for abuse of his trust;

(*b*) for continued failure to perform its duties;

(*c*) for incapacity to perform its duties;

(*d*) for gross immorality;

(*e*) for having an interest adverse to the faithful performance of his duties;

(*f*) for removal from the local limits of the jurisdiction of the Court;

(*g*) by reason of the arrival within those limits of some person whose guardianship the Court may think likely to be more beneficial to the ward than that of his guardian; or

(*h*) in the case of a guardian of the property, for insolvency.

(*2*) When a guardian has been removed for any such cause, the Court may appoint a successor to him under the provisions of Chapter II.

[Act XL 1858, s. 23: Act XX, 1864, s. 23: and Act XIII, 1874, ss. 23 and 24.]

Discharge of guardian.

34. (*1*) If a guardian desires to resign his office, he may apply to the Court to be discharged.

(*2*) If the Court finds that there is some other proper person whom it may appoint to be guardian under the provisions of Chapter II, it shall discharge the applicant from the guardianship and appoint the other person in his place.

[ActXL, 1858, s. 27: Act XX, 1864, s. 31: and Act XIII, 1874, s. 25.]

Cessation of authority of guardian.

35. (*1*) The power of a guardian of the person ceases—

(*a*) by his removal or discharge;

(*b*) by the Court of Wards assuming superintendence of the person of the ward;

(*c*) by the ward ceasing to be a minor;

(*d*) in the case of a female ward, by her marriage followed by cohabitation with her husband; or

(*e*) in the case of a ward whose father was a minor, or deemed unfit to perform, or incapable of performing, the duties of a guardian of the person of the ward, by the father ceasing to be a minor or, as the case may be, to be deemed unfit or incapable as aforesaid.

(*2*) The power of a guardian of the property ceases—

(*a*) by his removal or discharge;

(*b*) by the Court of Wards assuming superintendence of the property of the ward; or

(*c*) by the ward ceasing to be a minor.

(*3*) When for any cause a person ceases to be a guardian, the Court may require him to deliver as it directs any property in his possession belonging to the ward. [Act XL, 1858, s. 21, and Act XX, 1864, s. 21.]

(*4*) When he has delivered as the Court directs the property, if any, in his possession belonging to the ward, the Court may declare him to be discharged from his liabilities as guardian, save as regards any fraud which may subsequently be discovered. [Act XL, 1858, s. 23, and Act XX, 1864, s. 23.]

CHAPTER IV.

SUPPLEMENTAL PROVISIONS.

Orders for regulating conduct or proceedings of guardians, and enforcement of these orders.

36. (*1*) The Court may, on the application of any person interested or of its own motion, make an order regulating the conduct or proceedings of any guardian who has not been appointed by a Court of Wards, whether the guardian has been appointed or declared by the Court under this Act or not. [Act XL, 1858, s. 2: Act XX, 1864, s. 1: Act XIII, 1874, s. 20: and Act XIV, 1882, s. 493.]

(*2*) In case of disobedience to an order made under sub-section (*1*), the order may be enforced in the same manner as an injunction granted under section 492 or section 493 of the Code of Civil Procedure, as if the guardian were the defendant and the ward the plaintiff. XIV of 1882.

Penalty for removal of ward from jurisdiction.

37. If, for the purpose or with the effect of preventing the Court from exercising its authority with respect to a ward, the guardian of the ward removes him from the limits of the jurisdiction of the Court in contravention of the prohibition contained in section 22, he shall be liable, by order of the Court, to fine not exceeding one thousand rupees, or to imprisonment for a term which may extend to six months, or to both. [Act XIII, 1874, s. 14.]

Penalty for failure to account.

38. If a guardian fails to deliver to the Court, within six months from the date of his appointment or declaration by the Court, or within such shorter time as the Court directs, the statement mentioned in clause (*b*) of section 28, or to exhibit his accounts in the Court, as required by clause (*c*) of that section, or to pay into the Court the balance due from him on those accounts, as required by clause (*d*) of that section, [Act XL, 1858, s. 22, and Act XX, 1864, s. 22.]

or if a person who has ceased to be a guardian fails, on the requisition of the Court, to deliver as the Court directs any property in his possession belonging to the ward,

he shall be liable, by order of the Court, to fine not exceeding one hundred rupees, and, in case of recusancy, to further fine not exceeding fifty rupees for each day after the first during which the default continues and to detention in the civil jail until he consents to deliver the statement, or exhibit the accounts, or pay the balance, or deliver the property, as the case may be.

The Guardians and Wards Bill, 1886.

(Chapter IV —Supplemental Provisions.—Sections 39-46.)

(The Schedule.—Enactments repealed.)

[Act V, 1886, s. 14.]

39. Nothing in this Act shall prevent a person from being prosecuted under any other law for an act or omission which constitutes an offence against this Act, or from being liable under that other law to any other or higher punishment or penalty than that provided by this Act:

Saving of prosecutions under other laws.

Provided that a person shall not be punished twice for the same offence.

[Act XL, 1858, ss. 6 and 8, and Act XX, 1864, ss. 5 and 7.]

40. The Court may call upon the Collector, or upon any Court subordinate to the Court, for a report on any matter arising in any proceeding under this Act and treat the report as evidence.

Reports by Collectors and Subordinate Courts.

[Act XL, 1858, s. 28: Act XX, 1864, s. 33; and Act IX, 1861, s. 5.]

41. An appeal shall lie to the High Court from an order made by a District Court—

Orders appealable.

(*a*) under section 7, appointing or declaring or refusing to appoint or declare a guardian; or

(*b*) under section 9, sub-section (*3*), refusing an application; or

(*c*) under section 21, making or refusing to make an order for the return of a ward to the custody of his guardian; or

(*d*) under section 24, refusing to grant permission to the guardian to do an act mentioned in that section; or

(*e*) under section 26, sub-section (*1*), defining, restricting or extending the powers of a guardian; or

(*f*) under section 33, sub-section (*1*), removing a guardian; or

(*g*) under section 34, refusing to discharge a guardian; or

(*h*) under section 36, regulating the conduct or proceedings of a guardian, or enforcing the order; or

(*i*) under section 37 or section 38, imposing a penalty.

[Act IX, 1861, s. 6, and Act XIII, 1874, s. 9.]

42. Save as provided by the last foregoing section and by section 622 of the Code of Civil Procedure, an order made under this Act shall be final, and shall not be liable to be contested by suit or otherwise.

Finality of other orders.

XIV of 1882.

[Act X, 1865, s. 241, and Act V, 1881, s. 57.]

43. The High Court may refuse an application made to it under this Act if in its opinion the application would be disposed of more justly or conveniently by any other Court having jurisdiction.

Power of High Court to refuse application capable of being dealt with by another Court.

[Act XL, 1858, s. 13, and Act XX, 1864, s. 13.]

44. The costs of any proceeding under this Act shall, subject to any rules made by the High Court under this Act, be in the discretion of the Court in which the proceeding is held.

Costs.

[New. cf. Act XIII, 1874, s. 8.]

45. In addition to any other power to make rules conferred expressly or impliedly by this Act, the High Court may from time to time make rules—

Power of High Court to make rules.

(*a*) as to the procedure to be followed with respect to applications of guardians for permission to do acts mentioned in section 24;

(*b*) as to the security to be required from guardians;

(*c*) as to the preservation of statements and accounts delivered and exhibited by guardians;

(*d*) as to the inspection of those statements and accounts by persons interested;

(*e*) as to the custody of money, and securities for money, belonging to wards;

(*f*) as to the securities on which money belonging to wards may be invested;

(*g*) as to allowances to be granted to guardians for their care and pains in the execution of their duties; and

(*h*) generally, for carrying out the purposes of this Act.

[New.]

46. A guardian appointed by, or holding a certificate of administration from, a Civil Court under any enactment repealed by this Act shall, save as may be prescribed, be subject to the provisions of this Act, and of the rules made under it, as if he had been appointed under Chapter II.

Applicability of Act to guardians already appointed by Court.

THE SCHEDULE.

ENACTMENTS REPEALED.

(See section 2.)

Number and year.	Title or subject.	Extent of repeal.
	Acts of the Governor General in Council.	
XIV of 1858.	Minors (Madras) ...	The whole.
XL of 1858.	Minors (Bengal) ...	So much as has not been repealed.
XX of 1864.	Minors (Bombay) ...	The whole.
IX of 1861.	Minors	The whole.
VII of 1870.	Court-fees	Section 19 H, and article 10 of Schedule I.
IV of 1872.	Punjab Laws	So far as it relates to Act XL of 1858.
XIX of 1873.	North-Western Provinces Land-revenue.	Section 258.
XIII of 1874.	European British Minors.	The whole.
XV of 1884.	Laws Local Extent ...	So far as it relates to any enactment repealed by this Act.
XVII of 1875.	Burma Courts	Section 96.
XX of 1875.	Central Provinces Laws.	So far as it relates to Act XL of 1858.
XVIII of 1876.	Oudh Laws	So far as it relates to Act XL of 1858.
	Madras Regulations.	
V of 1804.	Court of Wards ...	Section 20 and so much of sections 21 and 22 as relates to persons and property of minors not subject to the superintendence of the Court of Wards.
X of 1831.	Minors' Estates ...	Section 3.

STATEMENT OF OBJECTS AND REASONS.

This Bill to consolidate and amend the law relating to Guardian and Ward is based on opinions elicited by a reference to Local Governments and High Courts on the subject of certain defects in the law relating to the guardianship of minors, and its object is to provide a law of Guardian and Ward applicable as far as possible to all classes of Her Majesty's subjects in British India.

2. Among the enactments which the Bill will supersede are Act XL of 1858 and portions of the Madras Code, relating to minors in the Presidencies of Bengal and Madras who are not European British subjects and are not under the superintendence of a Court of Wards; Act XX of 1864, relating to minors in the Presidency of Bombay who are not European British subjects; Act IX of 1861, relating to the custody and guardianship of minors who are not European British subjects; and Act XIII of 1874, relating to the guardianship of European British minors in territories beyond the jurisdiction of the chartered High Courts.

3. The Bill, which follows generally the frame of Act XIII of 1874, is drawn as applicable to all District Courts and High Courts (including the chartered High Courts) and to minors of all creeds and races. But it does not take away any of the powers at present possessed by the chartered High Courts, and it provides that, in the selection of guardians and other matters, regard shall be had to the personal law of the minor. The jurisdiction and authority of Courts of Wards are expressly saved and will not be in any way affected by the proposed law.

4. One effect of the assimilation of the law will be to do away with the rule, which obtains in the Presidencies of Bengal and Bombay, that no person shall be entitled to institute or defend any suit connected with a minor's estate of which he claims the charge until he has obtained a certificate of administration. It is proposed that suits by and against minors shall be regulated by Chapter XXXI of the Code of Civil Procedure, and that, in a Bill which is to be introduced to amend that Code, provision be inserted conferring, among other privileges, on a guardian who has been appointed, or whose title has been declared, under the Guardians and Wards law, a preferential right to be appointed next friend or guardian for the suit.

5. The several sections of the Bill which appear to call for remark will now be noticed in consecutive order.

6. *Section 4, clause (1).*—In connection with section 26, Act XL of 1858, section 30, Act XX of 1864, and section 2, Act XIII of 1874, the question arose whether the age of majority should be dealt with in the Bill. As there was no necessity to deal with it, it was considered expedient to avoid the difficulty of doing so by defining "minor," in the terms of section 11 of the Indian Contract Act, 1872, as a person who has not reached the age of majority according to the law to which he is subject.

7. *Section 4, clause (2).*—"Guardian" has been so defined as to mean any person having the care of the person of a minor or of his property, or of both his person and property. The Bill, therefore, relates to guardians generally except where it is expressed to relate to particular classes of guardians.

8. *Section 5.*—This section follows Act XIII of 1874, which, in recognising in certain circumstances the right of a mother to appoint a guardian, was based on the New York Civil Code. The section goes beyond section 47 of the Indian Succession Act and beyond the English law. But under the English law an appointment by a mother is not now wholly ineffectual, and is likely at no distant date to be declared to be valid except in so far as it may interfere with an appointment by the father.

9. *Sections 9 and 43.*—The High Court and District Court will have concurrent jurisdiction, but the High Court may refuse an application with respect to the guardianship of a minor if in its opinion the application would be disposed of more justly or conveniently by a District Court. Where the application is with respect to the guardianship of the person of a minor, it is ordinarily to be made to the Court having jurisdiction in the place where the minor resides, that being the Court which can most effectively discharge the duties incident to the appointment of a guardian to the person of the minor.

10. *Section 11, sub-section (2).*—The sub-section follows an order made by the High Court of Judicature for the North-Western Provinces with a view to facilitating the discharge by Collectors of their duty of accertaining and reporting to the Court of Wards from time to time what proprietors may come within the description of disqualified landholders.

11. *Section 14, sub-section (4).*—The rule laid down in this sub-section is, as explained by Sir Arthur Hobhouse with respect to the corresponding section in Act XIII. of 1874, based solely on grounds of convenience.

12. *Section 15, sub-section (5), and section 17.*—As regards a minor who is a member of an undivided Hindu family, it seems to be generally admitted that it is desirable, as a rule, to leave him to his natural guardians without interference. But such a minor has certain rights in respect of the family property, and those rights are capable of being protected by a guardian. The guardian could not assume the management of the common property, and possibly he would, owing to the constitution of the co-ownership, be debarred from taking directly even a share in the management, and be confined to a mere power of control from without and a right in the last resort to demand a partition. But even this limited authority might in some cases be of great importance.

As regards the view hitherto taken by the Courts on this subject, it has indeed been held by the High Courts at Fort William and Bombay that Acts XL of 1858 and XX of 1864 could not be applied where the minor had no rights except as a member of an undivided Hindu family (I. L. R. 5 Cal. 219 and 3 Bom. 431, and 12 Bom. H. C. Rep. 247). Some doubt has been thrown on this view by the case

before the Privy Council reported in I. L. R. 8 Cal. 656 (I L. R. 6 Bom. 595 and 8 Bom. 396); but in any case it is a view which seems to be based on the peculiar wording of those Acts, which have been construed as contemplating an actual and (perhaps) corporeal taking charge of and management of some tangible property. In other words, these cases merely decide that under the particular Acts a manager cannot be appointed for a minor member of a pure joint family, not that such a manager is a thing inconceivable or impossible (I. L. R. 7 Cal. 369).

As regards the provisions of certain enactments which allow the Court of Wards to take charge only of the estate of a minor who is a sole owner (Act IV, 1872, section 35, Act XVII, 1876, section 161, and Bengal Act IX, 1879, section 7), they are to be accounted for by the fact that these enactments were designed mainly to guard against the risk of loss of revenue from an estate being left without any competent person in charge of it. That it was not considered impossible to take charge of the interest of a minor shareholder is manifest from Madras Regulations V of 1804, section 20, and X. of 1831, section 3, and from the circumstance that section 14 of Act XL of 1858 and other similar enactments provide for the Collector taking charge of the share of a co-owner who is still a minor on the estate escaping from the management of the Court of Wards owing to the other co-owners having come of age. The Courts of Wards in the North-Western Provinces (Act XIX of 1873) and Central Provinces (Act XVII of 1885) are not precluded from assuming superintendence of the interest of a disqualified person who is a co-owner in an estate with other persons who are not disqualified.

It may be gathered from the proceedings of the Legislative Council, 1854-55, pages 672 *et seq.*, that it was the intention of the framers of Act XL of 1858 that the Civil Court should appoint guardians for minors owning shares in estates, and it would seem that it is only owing to the peculiar wording of the Act, coupled perhaps with a natural disinclination on the part of the Courts to interfere between joint-owners, that that intention has been defeated.

13. *Section 18.*—This section lays down certain general propositions based on the fact that guardianship is a trust, and that the relationship between guardian and ward is one *uberrimæ fidei*, not only while it lasts, but even after it has ceased to exist.

14. *Sections 24 and 25.*—These sections are based on section 18 of the Acts of 1858 and 1864 and the corresponding section of the Act of 1874, on certain provisions in the Code of Lower Canada, and on suggestions received for the amendment of the Acts of 1858 and 1864. They provide that a guardian who has been appointed, or whose title has been declared, by the Court, shall not borrow for his ward, or transfer any part of the principal of his property, without the permission of the Court, and that the Court, before granting its permission, shall satisfy itself that the transaction proposed is either necessary or for the evident advantage of the ward, and, when granting the permission, shall itself record an order setting forth the necessity or advantage and the conditions subject to which it permits the loan to be taken or the transfer to be effected (I. L. R. 5 Cal. 363 and 6 Cal. 161).

These sections will be supplemented by rules made by the High Court under section 44.

15. *Section 28, clause (a), and section 29.*—These provisions are suggested by the case reported at I. L. R. 5 All. 248.

16. *Section 32.*—The rule contained in this section follows from guardianship being a trust. Though the right of survivorship is not acknowledged in England in the case of guardians appointed by the Court of Chancery, yet in practice the survivor or survivors will be re-elected by the Court without a reference. In America there is the right of survivorship among guardians appointed by the Court of Chancery.

17. *Section 33.*—A testamentary guardian may be removed under this section.

18. *Section 41.*—The cases reported at 15 W. R. 492 and 22 W. R. 479 have suggested the specification of the orders from which an appeal shall lie.

19. Acts XL of 1858 and XX of 1864 provide, in sections 27 and 31, respectively, that nothing in those Acts shall authorise the appointment of any person other than a female as the guardian of the person of a female. The cases reported at I. L. R. 10 Cal. 15 and 11 Cal. 574, and the remarks at pages 213-14 of Sayyid Amir Ali's *Personal Law of Muhammadans*, seem to render the re-enactment of the provision inexpedient. Section 15 of the Bill specifies the matters by which the Court is to be guided in appointing a guardian, and one of those matters is the law to which the minor is subject.

20. The provision Act XX. of 1864, that the legal heir of a minor, or the person next in succession to his property, may not be appointed guardian of the person of the minor, has not been repeated. It is considered that the appointment of such persons should not be absolutely prohibited. This was the opinion of the Supreme Council when Act XL. of 1858 was about to be enacted (Proceedings of Legislative Council, 1858, pages 576-77), and is the opinion of the Hon'ble Mr. M. Melvill.

21. If the Bill becomes law in its present form, article 10 of schedule I. of the Court-fees Act, 1870, which applies only to the Presidencies of Bengal and Bombay, will become obsolete. It has, therefore, been included in the schedule of enactments to be repealed.

22. A table is appended showing how the principal enactments scheduled for repeal have been reproduced in the Bill or otherwise dealt with.

C. P. ILBERT.

The 12th March 1886.

Statement showing how the principal Enactments scheduled for repeal in the Guardians and Wards Bill have been reproduced in the Bill or otherwise dealt with.

Enactments scheduled for repeal.	How reproduced or otherwise dealt with.
ACT XIV OF 1858—	
Section 1	Sections 20, 28 (*e*) and 36 of Bill.
2	
3	Section 21 of Bill.
4	Sections 41 and 42 of Bill.
ACT XL OF 1858—	
Section 1	Repealed by Act XIV of 1870.
2	Sections 3, 26 and 36 of Bill.
3, paragraph 1...	Section 8 of Bill.
paragraph 2 } who to institute or de-	Left to be dealt with in the Bill to amend the Code of Civil Procedure. See paragraph 4 of Statement of Objects and Reasons.
proviso } fend suits on behalf of minors.	
4	Section 8 of Bill.
5	Section 9 of Bill.
6, paragraph 1...	Section 11 (*1*) of Bill.
paragraph 2...	Section 13 of Bill.
proviso	Section 40 of Bill.
7	Sections 7 and 8 of Bill.
8	Section 40 of Bill.
Sections 9, 10 and 11, paragraphs 1 and 2 ...	Sections 7 and 14 (*2*) of Bill.
Section 11, paragraph 3...	Section 28 (*f*) of Bill.
paragraph 4...	Section 28 (*e*) of Bill.
12: when Collector may be directed to take charge of estate. *(Repealed in Lower Provinces by Bengal Act IX of 1879.)*	Unnecessary. The Court of Wards can act in cases in which management by the Collector is desirable.
13	Section 44 of Bill.
14: when Collector may be directed to retain charge of shares and persons of certain minors. *(Repealed in Lower Provinces by Bengal Act IX of 1879, and in Central Provinces by Act XVII of 1885.)*	Unnecessary, as Chapter II is framed. See paragraph 12 of Statement of Objects and Reasons.
15: control of proceedings of Collector. *(Repealed in Lower Porvinces by Bengal Act IX of 1879.)*	Unnecessary, as the Bill is framed.
16, paragraph 1...	Section 28 (*b*) of Bill.
paragraph 2...	Section 28 (*c*) of Bill.
paragraph 3...	Compare sections 29 and 30 of Bill.
17	Sections 28 (*d*) and 45 (*e*) and (*f*) of Bill.
18, paragraph 1...	Section 26 (*3*) of Bill.
paragraph 2...	Sections 24 and 25 of Bill.
19	Sections 29, 30 and 31 of Bill.
20: continuance of suit after disqualification ceases.	Will be covered by the Code of Civil Procedure.
21 *(Repealed in part in Lower Provinces by Bengal Act IX of 1879.)*	Sections 33 and 35 (*3*) of Bill.
22	Section 38 of Bill.
23, first sentence	Section 34 of Bill.
second sentence	Section 35 (*3*) and (*4*) of Bill.
24	Sections 28 (*f*) and 45 (*g*) of Bill.
25 *(Repealed in part in Lower Provinces by Bengal Act IV of 1870, section 86.)*	Sections 20, 28 (*e*) and 36 of Bill.
26	Section 4 (*1*) of Bill: and see paragraph 6 of Statement of Objects and Reasons.

Statement showing how the principal Enactments scheduled for repeal in the Guardians and Wards Bill have been reproduced in the Bill or otherwise dealt with—continued.

Enactments scheduled for repeal.	How reproduced or otherwise dealt with.
ACT XL OF 1858—*continued.*	
Section 27, paragraph 1, first sentence ...	Section 16 of Bill.
second sentence: guardians of females to be themselves females.	Not reproduced. See paragraph 19 of Statement of Objects and Reasons.
paragraph 2..	Section 35 (*1*) (*d*) and (*e*) of Bill.
28	Section 41 of Bill.
29, paragraph 1, first sentence ...	Sections 4 (*4*) and 9 of Bill.
second sentence ...	Section 3 of Bill.
paragraph 2 (*number and gender*) ...	Not reproduced. See the General Clauses Act, I. of 1868.
ACT IX OF 1861—	
Section 1, first sentence	Sections 7, 8, 9 and 10 of Bill.
second sentence	Section 11 (*1*) of Bill.
2	Section 12 of Bill.
3	Sections 7, 13 and 44 of Bill.
4: application of Code of Civil Procedure.	Not reproduced. See section 647 of the Code of Civil Procedure.
5	Section 41 of Bill.
6	Section 42 of Bill.
7	Section 3 of Bill.
8: definition of "Sadr Court" ...	Not reproduced. See the General Clauses Act, I. of 1868.
ACT XX OF 1864—	
Section 1	Sections 26 and 36 of Bill.
2, paragraph 1	Section 8 of Bill.
paragraph 2 } who to institute or defend suits on behalf	Left to be dealt with in the Bill to amend the Code of Civil Procedure. See paragraph 4 of Statement of Objects and Reasons.
proviso } of minors.	
3	Section 8 of Bill.
4	Section 9 of Bill.
5, paragraph 1	Section 11 (*1*) of Bill.
paragraph 2	Section 13 of Bill.
proviso	Section 40 of Bill.
6	Sections 7 and 8 of Bill.
7	Section 40 of Bill.
Sections 8, 9 and 10, paragraphs 1 and 2, and proviso.	Sections 7 and 14 (*2*) of Bill. See paragraph 20 of the Statement of Objects and Reasons.
Section 10, paragraph 3	Section 28 (*f*) of Bill.
10, paragraph 4...	Section 28 (*e*) of Bill.
11: when Collector may be directed to take charge of estate.	Unnecessary, as section 7 is framed.
12	Section 28 (*a*) of Bill.
13	Section 44 of Bill.
14: procedure when proprietor of estate under Collector's charge comes of age.	Unnecessary, as Chapter II. is framed. See paragraph 12 of Statement of Objects and Reasons.
15: control of proceedings of Collector. ...	Unnecessary, as the Bill is framed.
16, paragraph 1...	Section 28 (*b*) of Bill.
paragraph 2...	Section 28 (*c*) of Bill.
paragraph 3...	Compare sections 29 and 30 of Bill.
17	Sections 28 (*d*) and 45 (*e*) and (*f*) of Bill.
18, paragraph 1...	Section 26 (*3*) of Bill.
paragraph 2...	Sections 24 and 25 of Bill.
19	Sections 29, 30 and 31 of Bill.
20: continuance of suit after disqualification ceases.	Will be covered by the Code of Civil Procedure.

Statement showing how the principal Enactments scheduled for repeal in the Guardians and Wards Bill have been reproduced in the Bill or otherwise dealt with—continued.

Enactments scheduled for repeal.	How reproduced or otherwise dealt with.
ACT XX OF 1864—*continued.*	
Section 21	Sections 33 and 35 (*3*) of Bill.
22	Section 38 of Bill.
23, first sentence	Section 34 of Bill.
second sentence	Section 35 (*3*) and (*4*) of Bill.
24	Sections 28 (*f*) and 45 (*g*) of Bill.
25	Sections 20, 28 (*e*) and 36 of Bill.
26	Sections 20, 22 (*1*) and 36 of Bill.
27	
28	Section 28 (*e*) of Bill.
29: marriage of minors	Compare sections 20, 24 and 28 (*e*) of Bill.
30	Section 4 (*1*) of Bill: and see paragraph 6 of Statement of Objects and Reasons.
31, paragraph 1: as to guardians of married females.	Section 16 of Bill.
paragraph 1: as to guardians of females being themselves females.	Not reproduced. See paragraph 19 of Statement of Objects and Reasons.
paragraph 2: guardianship to cease when husband attains majority.	Section 35 (*1*) (*d*).
32: saving of Act XXXV of 1858 (*Lunatics.*)	Not reproduced.
33	Section 41 of Bill.
34, paragraph 1...	Sections 4 (*4*) and 9 of Bill.
paragraph 2...	Section 3 of Bill.
paragraph 3 (*number and gender*) ...	Not reproduced. See the General Clauses Act, I of 1868.
ACT XIII OF 1874:	
Section 1 (Formal)	
2 "Minor"	Section 4 (*1*) of Bill.
"Guardian"	Section 4 (*2*) of Bill.
"Court"	Sections 4 (*4*) and 9 of Bill.
3	Section 5 of Bill.
4, paragraph 1	Section 7 of Bill.
paragraph 2	Section 14 (*3*) of Bill.
paragraph 3	Section 14 (*4*) of Bill.
5, paragraph 1	Sections 8 and 10 (*1*) of Bill.
paragraph 2	Section 10 (*2*) of Bill.
paragraph 3	Section 11 (*1*) of Bill.
6	Section 12 of Bill.
7	Sections 7, 13 and 44 of Bill.
8, paragraph 1, first and second sentences: application of Code of Civil Procedure.	Not reproduced. See section 647 of the Code of Civil Procedure.
third sentence. ...	Section 41 of Bill.
paragraph 2 (Forms)	Not reproduced.
paragraph 3	Section 45 of Bill.
9	Section 42 of Bill.
10, clause (*a*)	Section 15 (*1*) and (*3*) of Bill.
clause (*b*)	Section 15 (*4*) of Bill.
clause (*c*)	Section 15 (*2*) of Bill.
11	Section 20 of Bill.
12	
13	Section 21 of Bill.
14, paragraph 1...	Section 22 (*1*) of Bill.
paragraph 2...	Section 37 of Bill.
15	Section 23 of Bill.
16	Sections 24 and 25 of Bill.
17	Section 28 (*e*) of Bill.
18, clauses (*a*) to (*d*)	Section 28 (*a*), (*c*), (*d*) and (*f*) of Bill.

Statement showing how the principal Enactments scheduled for repeal in the Guardians and Wards Bill have been reproduced in the Bill or otherwise dealt with—concluded.

Enactments scheduled for repeal.	How reproduced or otherwise dealt with.
ACT XIII OF 1874—*continued.*	
Section 18, clause (*c*)	Section 18 (*3*) of Bill.
19	Section 19 of Bill.
20	Sections 26 (*1*) and 36 (*1*) of Bill.
21	Section 32 of Bill.
22	Section 33 of Bill.
23	Section 34 of Bill.
24	Sections 33 (*2*) and 34 (*2*) of Bill.
25, paragraph 1...	Section 35 (*1*) of Bill.
paragraph 2...	Section 35 (*2*) of Bill.
Schedule (Forms)	Not reproduced.

S. HARVEY JAMES,
Officiating Secretary to the Government of India.

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PART VI.

BILLS OF THE GOVERNMENT OF INDIA.

LEGISLATIVE DEPARTMENT.

The following Bill was introduced into the Council of the Governor General of India for the purpose of making Laws and Regulations on the 19th March, 1886, and was referred to a Select Committee:—

Bill No. 5 of 1886.

THE GUARDIANS AND WARDS BILL, 1886.

CONTENTS.

The Guardians and Wards Bill, 1886.

(Chapter II.—Appointment of Guardians.—Sections 12-17.)

(Chapter III.—Duties, Rights and Liabilities of Guardians.—Sections 18-19.)

[Act IX, 1861, s. 2, and Act XIII, 1874, s. 6.]

12. The Court may direct that the person (if any) having the custody of the minor shall produce him at such place and time as it appoints, and may make such order for the temporary custody and protection of the person or property of the minor as it thinks proper.

Power to make interlocutory order for production of minor and interim protection of his person and property.

[Act IX, 1861, s. 3 and Act XIII, 1874, s. 7.]

13. On the day fixed for the hearing of the application, or as soon afterwards as may be, the Court shall hear such evidence as may be adduced in support of or in opposition to the application.

Hearing of evidence before making of order.

[Act XIII, 1874, s. 21.]

14. (*1*) If the law to which the minor is subject admits of his having two or more joint guardians of his person or property, or both, the Court may, if it thinks fit, appoint or declare them.

Appointment of several guardians.

(*2*) Separate guardians may be appointed or declared of the person and of the property of a minor.

[Act XIII, 1874, s. 4.]

(*3*) If a minor has several properties, the Court may, if it thinks fit, appoint or declare a separate guardian for any one or more of the properties.

[Act XIII, 1874, s. 4.]

(*4*) If the Court appoints or declares a guardian for any property situate beyond the local limits of its jurisdiction, the Court having jurisdiction in the place where the property is situate shall accept the guardian as duly appointed or declared and give effect to the order appointing or declaring him.

[Act XIII, 1874, s. 10].

15. (*1*) In appointing or declaring the guardian of a minor the Court shall be guided by the law to which the minor is subject and by what appears to be, consistently with that law, for the best interest of the minor with respect to his mental, moral and temporal welfare.

Matters to be considered by the Court in appointing guardian.

(*2*) In considering what will be for the best interest of the minor, the Court shall have regard to his age, his relationship to the proposed guardian, the wishes of a deceased parent (if any), and any existing or previous connection of the proposed guardian with the person or property of the minor.

(*3*) If the minor is old enough to form an intelligent preference, the Court may consider that preference.

X of 1885.

(*4*) In the case of persons to whom the Indian Succession Act, 1865, applies, as between parents adversely claiming the guardianship, neither parent is entitled to it as of right: but other things being equal in such case, if the minor is of tender years, he should be given to the mother, and if he is of an age to require education and preparation for labour and business, then to the father.

[New.]

(*5*) Where the minor is a member of an undivided Hindu family, special weight is to be attached to any claim which the managing member of the family may make to be appointed or declared guardian, and to any objection which he may take to an appointment or declaration asked for in an application.

(*6*) The Court shall not appoint a person to be guardian against his will.

[Act XL, 1858, s. 27: Act XX, 1864, s. 31: Act XIII, 1874, s. 25: and Act XVII, 1885, s. 8.]

16. Nothing in this Chapter shall authorise the Court to appoint or declare a guardian of the person of a minor—

Guardian of the person not to be appointed by the Court in certain cases.

(*a*) who is a married female cohabiting with her husband, or

(*b*) whose father is living and is not a minor or, in the opinion of the Court, unfit to perform, or incapable of performing, the duties of a guardian of the person of the minor, or

(*c*) whose property is under the superintendence of a Court of Wards competent to appoint a guardian of his person.

[New.]

17. Where under this Chapter the Court appoints or declares a guardian of the property of a minor who is a member of an undivided Hindu family, it shall, except where it is proved to the satisfaction of the Court that the interests of the minor have been actually imperilled, appoint or declare the guardian subject to such restrictions as will prevent him from interfering with the powers of the managing member of the family.

Guardian of property to be appointed by the Court subject to restrictions in case of certain minors.

CHAPTER III.

DUTIES, RIGHTS AND LIABILITIES OF GUARDIANS.

General.

[Seton's Decrees, 739, and Act XIII, 1874, s. 18.]

18. (*1*) A guardian must act for the benefit of his ward.

Fiduciary relation of guardian to ward.

(*2*) He cannot make any profit out of his office.

(*3*) With respect to the property of the ward, he stands in the position of trustee for the ward, and is responsible for any loss occasioned to the property by his wilful default or gross negligence.

(*4*) This fiduciary relation extends to and affects purchases by a guardian of the property of his ward immediately or soon after the ward has ceased to be a minor, and generally all transactions between them while the influence of the guardian still lasts or is recent.

[Act XIII, 1874, s. 19.]

19. A minor is incompetent to act as guardian.

Minor incompetent to act.

The Guardians and Wards Bill, 1886.

(Chapter III.—Duties, Rights and Liabilities of Guardians.—Sections 20-25.)

Guardian of the Person.

[Act XIII, 1874, ss. 11 and 12.]

20. A guardian of the person of a ward is charged with the custody of the ward, and must look to his support, health and education, and such other matters as the law to which the ward is subject requires.

Duties of guardian of the person.

[Act XIII, 1874, s. 13.]

21. (*1*) If a ward leaves the custody of his guardian, he may be compelled by order of the Court to return to that custody.

Title of guardian to custody of ward.

(*2*) But the Court may refuse to make an order for his return to the custody of the guardian if it appears—

(*a*) that the ward has been ill-treated by the guardian; or

(*b*) that the conduct of the guardian in any other respect has rendered him unfit to have the custody of the ward; or

(*c*) that the ward is, on reasonable grounds not inconsistent with the law to which he is subject, unwilling to return, and, having attained to years of discretion, is capable of exercising a wise choice as to the custody in which he will remain.

[Eversley's Domestic Relations, 691-92.]

(*3*) The residence of a ward against the will of his guardian with a person who is not his guardian does not of itself terminate the guardianship.

[Act XIII, 1874, s. 14.

22. (*1*) A guardian of the person appointed or declared by the Court shall not, without the leave of the Court by which he was appointed or declared, remove the ward from the limits of its jurisdiction, except for such temporary purposes as may be prescribed or for the purpose of placing him beyond those limits at an educational institution appointed by the Local Government administering the territories within which the Court is established as an institution to which a guardian may send a ward without the leave of the Court.

Removal of ward from jurisdiction.

(*2*) The leave granted by the Court under sub-section (*1*) may be special or general, and may be defined by the order granting it.

Guardian of Property.

Act XIII, 1874, s. 15.]

23. (*1*) A guardian of the property of a ward must keep that property safely.

Duties of guardian of property.

(*2*) In the case of immoveable property, he must not suffer any waste, but must maintain the buildings (if any) thereon and their appurtenances out of the rents and profits of the property.

[Act XL, 1858, s. 18: Act XX, 1864, s. 18: and Act XIII, 1874, s. 16.]

24. Where a guardian of the property, of a ward has been appointed or declared by the Court, he shall not, without the previous permission of the Court,—

Limitation of powers of guardian of property appointed or declared by the Court.

(*a*) borrow for his ward; or

(*b*) mortgage, charge or transfer by sale, gift, exchange or otherwise any part of the immoveable property of his ward; or

(*c*) lease any part of that property for a term exceeding three years; or

(*d*) transfer any Government securities belonging to the ward, or the shares or other interest of the ward in any company; or

(*e*) dispose of any other part of the principal of the property of the ward:

Provided that the Court may, subject to any rules made by the High Court under this Act, exempt a guardian from the necessity of obtaining the permission of the Court under this section, either generally or in special circumstances, and as to either the whole or any specified part of the property of the ward. [Cf. Act V, 1881, s. 90.]

25. (*1*) Permission to the guardian to do any of the acts mentioned in the last foregoing section shall not be granted by the Court except in case of necessity or for an evident advantage to the ward. [New.]

Practice with respect to limitation of powers of guardian of property.

(*2*) The order granting the permission shall recite the necessity or advantage, as the case may be, describe the property with respect to which the act permitted is to be done, and specify such conditions, if any, as the Court may see fit to attach to the permission; and it shall be recorded, dated and signed by the Judge of the Court with his own hand, or, when from any cause he is prevented from recording the order with his own hand, shall be taken down in writing from his dictation and be dated and signed by him. [New.]

(*3*) The Court may in its discretion attach to the permission the following among other conditions, namely:— [New.]

(*a*) that a sale shall be made to the highest bidder by public auction, before the Court or some person specially appointed by the Court for that purpose, at a time and place to be specified by the Court, after such proclamation of the intended sale as the Court, subject to any rules made by the High Court under this Act, directs;

(*b*) that a lease shall not be made in consideration of a premium, or shall be made for such term of years and subject to such rents and covenants as the Court directs;

(*c*) that the whole or any part of the proceeds of the act permitted shall be paid into the Court by the guardian to be invested by the Court on prescribed securities or otherwise disposed of as the Court directs.

(*4*) Before granting permission to a guardian to do an act mentioned in the last foregoing section the Court may cause notice of the application for the permission to be given to any relative [New.]

The Guardians and Wards Bill, 1886.

(Chapter III.—Duties, Rights and Liabilities of Guardians.—Sections 26-31.)

or friend of the ward who should, in its opinion, receive notice thereof, and shall hear, and record the statement of, any person who appears in opposition to the application.

[Act XL, 1858, s. 2: [Act XX, 1864, s. 1: and Act XIII, 1874, s. 20.]

General powers of guardian of property.

26. (*1*) Where a guardian of the property of a ward has been appointed or declared by the Court, the Court may from time to time, by order, define, restrict or extend his powers with respect to the property of the ward in such manner and to such extent as it may consider to be for the advantage of the ward and consistent with the law to which the ward is subject.

(*2*) Subject to any such order and subject also to sections 17 and 24, a guardian appointed by or under a will or other instrument shall, with respect to the property of his ward, have such powers and be subject to such restrictions as are conferred or imposed on him by that instrument.

[Act II, 1882, s. 36.]

(*3*) Subject to the foregoing provisions of this section, a guardian of the property of a ward may do all acts which are reasonable and proper for the realization, protection or benefit of the property of the ward and are allowed by the law to which the ward is subject.

[Act II, 1882, s. 34.]

Right of guardian to apply to the Court for opinion in management of property of ward.

27. (*1*) A guardian may apply by petition to the Court for its opinion, advice or direction on any present questions respecting the management or administration of the property of his ward, other than questions not proper, in the opinion of the Court, for summary disposal.

(*2*) A copy of the petition shall be served upon, and the hearing thereof may be attended by, such of the persons interested in the application as the Court thinks fit.

(*3*) The guardian stating in good faith the facts in the petition and acting upon the opinion, advice or direction given by the Court shall be deemed, so far as regards his own responsibility, to have discharged his duty as guardian in the subject-matter of the application.

[Act XIII, 1874, s. 18.]

Obligations on, and privileges of, guardian of property.

28. Where a guardian of the property of a ward has been appointed or declared by the Court, he shall—

[Act X, 1865, s. 256, and Act V, 1881, s. 78.]

(*a*) if so required by the Court, give a bond, as nearly may be in the prescribed form, to the Judge of the Court to enure for the benefit of the Judge for the time being, with or without sureties, as may be prescribed, engaging duly to account for what he may receive in respect of the property of the ward;

[Act XL, 1858, s. 16, and Act XX, 1864, s. 16.]

(*b*) deliver to the Court, within six months from the date of his appointment or declaration by the Court, or within such shorter time as the Court directs, a statement of the immoveable property belonging to the ward, of the money and other moveable property which he has received on behalf of the ward up to the date of delivering the statement, and of the debts due on that date to or from the ward;

[Act XL, 1858, s. 16, and Act XX, 1864, s. 16.]

(*c*) exhibit his accounts in the Court at such times and in such form as the Court directs;

[Act XL, 1858, s. 17, and Act XX, 1864, s. 17.]

(*d*) if the Court so directs, pay into the Court the balance due from him on those accounts, or so much thereof as the Court directs, in the manner in which money is required by any rules for the time being in force to be paid into that Court;

[Act XL, 1858, s. 11: Act XX, 1864, s. 10: and Act XIII, 1874, s. 17.]

(*e*) apply for the maintenance, education and advancement of the ward such portion of the income of the property of the ward as the Court directs, and, if the Court so directs, the whole or any part of the principal of that property; and

[Act XL, 1858, s. 24, and Act XX, 1864, s. 24.]

(*f*) be entitled to such allowance, if any, as the Court thinks fit for his care and pains in the execution of his duties.

[Act X, 1865, s. 257, and Act V, 1881, s. 79, I. L. R. 5 All. 248.]

Suit against guardian where administration-bond was taken.

29. Where a guardian has given a bond duly to account for what he may receive in respect of the property of his ward, the Court may at any time, on being satisfied that the engagement of the bond has not been kept, and upon such terms as to security, or providing that the money received be paid into the Court, or otherwise, as the Court thinks fit, assign the bond to some proper person, who shall thereupon be entitled to sue on the bond in his own name as if the bond had been originally given to him instead of to the Judge of the Court, and shall be entitled to recover thereon, as trustee for the ward, the full amount recoverable in respect of any breach thereof.

[Act XL, 1858, s. 19, and Act XX 1864, s. 19.]

Suit against guardian where administration-bond was not taken.

30. Where a guardian has not given a bond as aforesaid, any person, with the leave of the Court, may, as next friend, at any time during the continuance of the minority of the ward, and upon such terms as aforesaid, institute a suit against the guardian, or, in case of his death, against his legal representative, for an account of what the guardian has received in respect of the property of the ward, and may recover in the suit, as trustee for the ward, the full amount found in the suit to have been received by the guardian and not to have been duly accounted for.

[Act XL, 1858, s. 19, and Act XX, 1864, s. 19.]

General liability of guardian as trustee.

31. Nothing in either of the last two foregoing sections shall be construed to deprive a ward or his legal representative of any remedy against his guardian, or the legal representative of the guardian, which, not being expressly provided in either of those sections, any other beneficiary or his legal representative would have against his trustee or the legal representative of the trustee.

The Guardians and Wards Bill, 1886.

(Chapter III.—Duties, Rights and Liabilities of Guardians.—Sections 32-35.)

(Chapter IV.—Supplemental Provisions.—Sections 36-38.)

Termination of Guardianship.

[Act XIII, 1874, s. 21.]

32. On the death of one of two or more joint guardians, the guardianship continues to the survivor or survivors until a further appointment is made by the Court.

Right of survivorship among joint guardians.

[Act XL, 1858, s. 21: Act XX, 1864, s. 21: and Act XIII, 1874, ss. 22 and 24.]

33. (*1*) The Court may, on the application of any person interested, or of its own motion, remove a guardian for any of the following causes, namely:—

Removal of guardian.

(*a*) for abuse of his trust;
(*b*) for continued failure to perform its duties;
(*c*) for incapacity to perform its duties;
(*d*) for gross immorality;
(*e*) for having an interest adverse to the faithful performance of his duties;
(*f*) for removal from the local limits of the jurisdiction of the Court;
(*g*) by reason of the arrival within those limits of some person whose guardianship the Court may think likely to be more beneficial to the ward than that of his guardian; or
(*h*) in the case of a guardian of the property, for insolvency.

(*2*) When a guardian has been removed for any such cause, the Court may appoint a successor to him under the provisions of Chapter II.

[Act XL 1858, s. 23: Act XX, 1864, s. 23: and Act XIII, 1874, ss. 23 and 24.]

34. (*1*) If a guardian desires to resign his office, he may apply to the Court to be discharged.

Discharge of guardian.

(*2*) If the Court finds that there is some other proper person whom it may appoint to be guardian under the provisions of Chapter II, it shall discharge the applicant from the guardianship and appoint the other person in his place.

[Act XL, 1858, s. 27: Act XX, 1864, s. 31: and Act XIII, 1874, s. 25.]

35. (*1*) The power of a guardian of the person ceases—

Cessation of authority of guardian.

(*a*) by his removal or discharge;
(*b*) by the Court of Wards assuming superintendence of the person of the ward;
(*c*) by the ward ceasing to be a minor;
(*d*) in the case of a female ward, by her marriage followed by cohabitation with her husband; or
(*e*) in the case of a ward whose father was a minor, or deemed unfit to perform, or incapable of performing, the duties of a guardian of the person of the ward, by the father ceasing to be a minor or, as the case may be, to be deemed unfit or incapable as aforesaid.

(*2*) The power of a guardian of the property ceases—

(*a*) by his removal or discharge;
(*b*) by the Court of Wards assuming superintendence of the property of the ward; or
(*c*) by the ward ceasing to be a minor.

(*3*) When for any cause a person ceases to be a guardian, the Court may require him to deliver as it directs any property in his possession belonging to the ward.

[Act XL, 1858, s. 21, and Act XX, 1864, s. 21.]

(*4*) When he has delivered as the Court directs the property, if any, in his possession belonging to the ward, the Court may declare him to be discharged from his liabilities as guardian, save as regards any fraud which may subsequently be discovered.

[Act XL, 1858, s. 23, and Act XX, 1864, s. 23.]

CHAPTER IV.

SUPPLEMENTAL PROVISIONS.

36. (*1*) The Court may, on the application of any person interested or of its own motion, make an order regulating the conduct or proceedings of any guardian who has not been appointed by a Court of Wards, whether the guardian has been appointed or declared by the Court under this Act or not.

Orders for regulating conduct or proceedings of guardians, and enforcement of these orders.

[Act XL, 1858, s. 2: Act XX, 1864, s. 1: Act XIII, 1874, s. 20: and Act XIV, 1882, s. 493.]

(*2*) In case of disobedience to an order made under sub-section (*1*), the order may be enforced in the same manner as an injunction granted under section 492 or section 493 of the Code of Civil Procedure, as if the guardian were the defendant and the ward the plaintiff. XIV of 1882.

37. If, for the purpose or with the effect of preventing the Court from exercising its authority with respect to a ward, the guardian of the ward removes him from the limits of the jurisdiction of the Court in contravention of the prohibition contained in section 22, he shall be liable, by order of the Court, to fine not exceeding one thousand rupees, or to imprisonment for a term which may extend to six months, or to both.

Penalty for removal of ward from jurisdiction.

[Act XIII, 1874, s. 14.]

38. If a guardian fails to deliver to the Court, within six months from the date of his appointment or declaration by the Court, or within such shorter time as the Court directs, the statement mentioned in clause (*b*) of section 28, or to exhibit his accounts in the Court, as required by clause (*c*) of that section, or to pay into the Court the balance due from him on those accounts, as required by clause (*d*) of that section,

Penalty for failure to account.

[Act XL, 1858, s. 22, and Act XX, 1864, s. 22.]

or if a person who has ceased to be a guardian fails, on the requisition of the Court, to deliver as the Court directs any property in his possession belonging to the ward,

he shall be liable, by order of the Court, to fine not exceeding one hundred rupees, and, in case of recusancy, to further fine not exceeding fifty rupees for each day after the first during which the default continues and to detention in the civil jail until he consents to deliver the statement, or exhibit the accounts, or pay the balance, or deliver the property, as the case may be.

The Guardians and Wards Bill, 1886.

(Chapter IV.—Supplemental Provisions.—Sections 39-46.)

(The Schedule.—Enactments repealed.)

[Act V, 1886, s. 14.]

Saving of prosecutions under other laws.

39. Nothing in this Act shall prevent a person from being prosecuted under any other law for an act or omission which constitutes an offence against this Act, or from being liable under that other law to any other or higher punishment or penalty than that provided by this Act:

Provided that a person shall not be punished twice for the same offence.

[Act XL, 1858, ss. 6 and 8, and Act XX, 1864, ss. 5 and 7.]

Reports by Collectors and Subordinate Courts.

40. The Court may call upon the Collector, or upon any Court subordinate to the Court, for a report on any matter arising in any proceeding under this Act and treat the report as evidence.

[Act XL, 1858, s. 28; Act XX, 1864, s. 33; and Act IX, 1861, s. 5.]

Orders appealable.

41. An appeal shall lie to the High Court from an order made by a District Court—

(*a*) under section 7, appointing or declaring or refusing to appoint or declare a guardian; or

(*b*) under section 9, sub-section (*3*), refusing an application; or

(*c*) under section 21, making or refusing to make an order for the return of a ward to the custody of his guardian; or

(*d*) under section 24, refusing to grant permission to the guardian to do an act mentioned in that section; or

(*e*) under section 26, sub-section (*1*), defining, restricting or extending the powers of a guardian; or

(*f*) under section 33, sub-section (*1*), removing a guardian; or

(*g*) under section 34, refusing to discharge a guardian; or

(*h*) under section 36, regulating the conduct or proceedings of a guardian, or enforcing the order; or

(*i*) under section 37 or section 38, imposing a penalty.

[Act IX, 1861, s. 6, and Act XIII, 1874, s. 9.]

Finality of other orders.

42. Save as provided by the last foregoing section and by section 622 of the Code of Civil Procedure, an order made under this Act shall be final, and shall not be liable to be contested by suit or otherwise.

XIV of 1882.

[Act X, 1865, s. 241, and Act V, 1881, s. 57.]

Power of High Court to refuse applications capable of being dealt with by another Court.

43. The High Court may refuse an application made to it under this Act if in its opinion the application would be disposed of more justly or conveniently by any other Court having jurisdiction.

[Act XL, 1858, s. 13, and Act XX, 1864, s. 13.]

Costs.

44. The costs of any proceeding under this Act shall, subject to any rules made by the High Court under this Act, be in the discretion of the Court in which the proceeding is held.

[New. cf. Act XIII, 1874, s. 8.]

Power of High Court to make rules.

45. In addition to any other power to make rules conferred expressly or impliedly by this Act, the High Court may from time to time make rules—

(*a*) as to the procedure to be followed with respect to applications of guardians for permission to do acts mentioned in section 24;

(*b*) as to the security to be required from guardians;

(*c*) as to the preservation of statements and accounts delivered and exhibited by guardians;

(*d*) as to the inspection of those statements and accounts by persons interested;

(*e*) as to the custody of money, and securities for money, belonging to wards;

(*f*) as to the securities on which money belonging to wards may be invested;

(*g*) as to allowances to be granted to guardians for their care and pains in the execution of their duties; and

(*h*) generally, for carrying out the purposes of this Act.

[New.]

Applicability of Act to guardians already appointed by Court.

46. A guardian appointed by, or holding a certificate of administration from, a Civil Court under any enactment repealed by this Act shall, save as may be prescribed, be subject to the provisions of this Act, and of the rules made under it, as if he had been appointed under Chapter II.

THE SCHEDULE.

ENACTMENTS REPEALED.

(*See section 2.*)

Number and year.	Title or subject.	Extent of repeal.
	Acts of the Governor General in Council.	
XIV of 1858.	Minors (Madras) ...	The whole.
XL of 1858.	Minors (Bengal) ...	So much as has not been repealed.
XX of 1864.	Minors (Bombay) ...	The whole.
IX of 1861.	Minors	The whole.
VII of 1870.	Court-fees	Section 19 H, and article 10 of Schedule I.
IV of 1872.	Punjab Laws	So far as it relates to Act XL of 1858.
XIX of 1873.	North-Western Provinces Land-revenue.	Section 258.
XIII of 1874.	European British Minors.	The whole.
XV of 1884.	Laws Local Extent ...	So far as it relates to any enactment repealed by this Act.
XVII of 1875.	Burma Courts	Section 96.
XX of 1875.	Central Provinces Laws.	So far as it relates to Act XL of 1858.
XVIII of 1876.	Oudh Laws	So far as it relates to Act XL of 1858.
	Madras Regulations.	
V of 1804.	Court of Wards ...	Section 20 and so much of sections 21 and 22 as relates to persons and property of minors not subject to the superintendence of the Court of Wards.
X of 1831.	Minors' Estates ...	Section 3.

STATEMENT OF OBJECTS AND REASONS.

This Bill to consolidate and amend the law relating to Guardian and Ward is based on opinions elicited by a reference to Local Governments and High Courts on the subject of certain defects in the law relating to the guardianship of minors, and its object is to provide a law of Guardian and Ward applicable as far as possible to all classes of Her Majesty's subjects in British India.

2. Among the enactments which the Bill will supersede are Act XL of 1858 and portions of the Madras Code, relating to minors in the Presidencies of Bengal and Madras who are not European British subjects and are not under the superintendence of a Court of Wards; Act XX of 1864, relating to minors in the Presidency of Bombay who are not European British subjects; Act IX of 1861, relating to the custody and guardianship of minors who are not European British subjects; and Act XIII of 1874, relating to the guardianship of European British minors in territories beyond the jurisdiction of the chartered High Courts.

3. The Bill, which follows generally the frame of Act XIII of 1874, is drawn as applicable to all District Courts and High Courts (including the chartered High Courts) and to minors of all creeds and races. But it does not take away any of the powers at present possessed by the chartered High Courts, and it provides that, in the selection of guardians and other matters, regard shall be had to the personal law of the minor. The jurisdiction and authority of Courts of Wards are expressly saved and will not be in any way affected by the proposed law.

4. One effect of the assimilation of the law will be to do away with the rule, which obtains in the Presidencies of Bengal and Bombay, that no person shall be entitled to institute or defend any suit connected with a minor's estate of which he claims the charge until he has obtained a certificate of administration. It is proposed that suits by and against minors shall be regulated by Chapter XXXI of the Code of Civil Procedure, and that, in a Bill which is to be introduced to amend that Code, provision be inserted conferring, among other privileges, on a guardian who has been appointed, or whose title has been declared, under the Guardians and Wards law, a preferential right to be appointed next friend or guardian for the suit.

5. The several sections of the Bill which appear to call for remark will now be noticed in consecutive order.

6. *Section 4, clause (1).*—In connection with section 26, Act XL of 1858, section 30, Act XX of 1864, and section 2, Act XIII of 1874, the question arose whether the age of majority should be dealt with in the Bill. As there was no necessity to deal with it, it was considered expedient to avoid the difficulty of doing so by defining "minor," in the terms of section 11 of the Indian Contract Act, 1872, as a person who has not reached the age of majority according to the law to which he is subject.

7. *Section 4, clause (2).*—"Guardian" has been so defined as to mean any person having the care of the person of a minor or of his property, or of both his person and property. The Bill, therefore, relates to guardians generally except where it is expressed to relate to particular classes of guardians.

8. *Section 5.*—This section follows Act XIII of 1874, which, in recognising in certain circumstances the right of a mother to appoint a guardian, was based on the New York Civil Code. The section goes beyond section 47 of the Indian Succession Act and beyond the English law. But under the English law an appointment by a mother is not now wholly ineffectual, and is likely at no distant date to be declared to be valid except in so far as it may interfere with an appointment by the father.

9. *Sections 9 and 43.*—The High Court and District Court will have concurrent jurisdiction, but the High Court may refuse an application with respect to the guardianship of a minor if in its opinion the application would be disposed of more justly or conveniently by a District Court. Where the application is with respect to the guardianship of the person of a minor, it is ordinarily to be made to the Court having jurisdiction in the place where the minor resides, that being the Court which can most effectively discharge the duties incident to the appointment of a guardian to the person of the minor.

10. *Section 11, sub-section (2).*—The sub-section follows an order made by the High Court of Judicature for the North-Western Provinces with a view to facilitating the discharge by Collectors of their duty of ascertaining and reporting to the Court of Wards from time to time what proprietors may come within the description of disqualified landholders.

11. *Section 14, sub-section (4).*—The rule laid down in this sub-section is, as explained by Sir Arthur Hobhouse with respect to the corresponding section in Act XIII. of 1874, based solely on grounds of convenience.

12. *Section 15, sub-section (5), and section 17.*—As regards a minor who is a member of an undivided Hindu family, it seems to be generally admitted that it is desirable, as a rule, to leave him to his natural guardians without interference. But such a minor has certain rights in respect of the family property, and those rights are capable of being protected by a guardian. The guardian could not assume the management of the common property, and possibly he would, owing to the constitution of the co-ownership, be debarred from taking directly even a share in the management, and be confined to a mere power of control from without and a right in the last resort to demand a partition. But even this limited authority might in some cases be of great importance.

As regards the view hitherto taken by the Courts on this subject, it has indeed been held by the High Courts at Fort William and Bombay that Acts XL of 1858 and XX of 1864 could not be applied where the minor had no rights except as a member of an undivided Hindu family (I. L. R. 5 Cal. 219 and 3 Bom. 431, and 12 Bom. H. C. Rep. 247). Some doubt has been thrown on this view by the case

before the Privy Council reported in I. L. R. 8 Cal. 656 (I. L. R. 6 Bom. 595 and 8 Bom. 396); but in any case it is a view which seems to be based on the peculiar wording of those Acts, which have been construed as contemplating an actual and (perhaps) corporeal taking charge of and management of some tangible property. In other words, these cases merely decide that under the particular Acts a manager cannot be appointed for a minor member of a pure joint family, not that such a manager is a thing inconceivable or impossible (I. L. R. 7 Cal. 369).

As regards the provisions of certain enactments which allow the Court of Wards to take charge only of the estate of a minor who is a sole owner (Act IV, 1872, section 35, Act XVII, 1876, section 161, and Bengal Act IX, 1879, section 7), they are to be accounted for by the fact that these enactments were designed mainly to guard against the risk of loss of revenue from an estate being left without any competent person in charge of it. That it was not considered impossible to take charge of the interest of a minor shareholder is manifest from Madras Regulations V of 1804, section 20, and X. of 1831, section 3, and from the circumstance that section 14 of Act XL of 1858 and other similar enactments provide for the Collector taking charge of the share of a co-owner who is still a minor on the estate escaping from the management of the Court of Wards owing to the other co-owners having come of age. The Courts of Wards in the North-Western Provinces (Act XIX of 1873) and Central Provinces (Act XVII of 1885) are not precluded from assuming superintendence of the interest of a disqualified person who is a co-owner in an estate with other persons who are not disqualified.

It may be gathered from the proceedings of the Legislative Council, 1854-55, pages 672 *et seq.*, that it was the intention of the framers of Act XL of 1858 that the Civil Court should appoint guardians for minors owning shares in estates, and it would seem that it is only owing to the peculiar wording of the Act, coupled perhaps with a natural disinclination on the part of the Courts to interfere between joint-owners, that that intention has been defeated.

13. *Section 18.*—This section lays down certain general propositions based on the fact that guardianship is a trust, and that the relationship between guardian and ward is one *uberrimæ fidei*, not only while it lasts, but even after it has ceased to exist.

14. *Sections 24 and 25.*—These sections are based on section 18 of the Acts of 1858 and 1864 and the corresponding section of the Act of 1874, on certain provisions in the Code of Lower Canada, and on suggestions received for the amendment of the Acts of 1858 and 1864. They provide that a guardian who has been appointed, or whose title has been declared, by the Court, shall not borrow for his ward, or transfer any part of the principal of his property, without the permission of the Court, and that the Court, before granting its permission, shall satisfy itself that the transaction proposed is either necessary or for the evident advantage of the ward, and, when granting the permission, shall itself record an order setting forth the necessity or advantage and the conditions subject to which it permits the loan to be taken or the transfer to be effected (I. L. R. 5 Cal. 363 and 6 Cal. 161).

These sections will be supplemented by rules made by the High Court under section 44.

15. *Section 28, clause (a), and section 29.*—These provisions are suggested by the case reported at I. L. R. 5 All. 248.

16. *Section 32.*—The rule contained in this section follows from guardianship being a trust. Though the right of survivorship is not acknowledged in England in the case of guardians appointed by the Court of Chancery, yet in practice the survivor or survivors will be re-elected by the Court without a reference. In America there is the right of survivorship among guardians appointed by the Court of Chancery.

17. *Section 33.*—A testamentary guardian may be removed under this section.

18. *Section 41.*—The cases reported at 15 W. R. 492 and 22 W. R. 479 have suggested the specification of the orders from which an appeal shall lie.

19. Acts XL of 1858 and XX of 1864 provide, in sections 27 and 31, respectively, that nothing in those Acts shall authorise the appointment of any person other than a female as the guardian of the person of a female. The cases reported at I. L. R. 10 Cal. 15 and 11 Cal. 574, and the remarks at pages 213-14 of Sayyid Amir Ali's *Personal Law of Muhammadans*, seem to render the re-enactment of the provision inexpedient. Section 15 of the Bill specifies the matters by which the Court is to be guided in appointing a guardian, and one of those matters is the law to which the minor is subject.

20. The provision of Act XX. of 1864, that the legal heir of a minor, or the person next in succession to his property, may not be appointed guardian of the person of the minor, has not been repeated. It is considered that the appointment of such persons should not be absolutely prohibited. This was the opinion of the Supreme Council when Act XL. of 1858 was about to be enacted (Proceedings of Legislative Council, 1858, pages 576-77), and is the opinion of the Hon'ble Mr. M. Melvill.

21. If the Bill becomes law in its present form, article 10 of schedule I. of the Court-fees Act, 1870, which applies only to the Presidencies of Bengal and Bombay, will become obsolete. It has, therefore, been included in the schedule of enactments to be repealed.

22. A table is appended showing how the principal enactments scheduled for repeal have been reproduced in the Bill or otherwise dealt with.

C. P. ILBERT.

The 12th March 1886.

Statement showing how the principal Enactments scheduled for repeal in the Guardians and Wards Bill have been reproduced in the Bill or otherwise dealt with.

Enactments scheduled for repeal.	How reproduced or otherwise dealt with.
ACT XIV OF 1858—	
Section 1	Sections 20, 28 (*e*) and 36 of Bill.
2	
3	Section 21 of Bill.
4	Sections 41 and 42 of Bill.
ACT XL OF 1858—	
Section 1	Repealed by Act XIV of 1870.
2	Sections 3, 26 and 36 of Bill.
3, paragraph 1...	Section 8 of Bill.
paragraph 2 } who to institute or de-	Left to be dealt with in the Bill to amend the Code of Civil Procedure. See paragraph 4 of Statement of Objects and Reasons.
proviso } fend suits on behalf of minors.	
4	Section 8 of Bill.
5	Section 9 of Bill.
6, paragraph 1...	Section 11 (*1*) of Bill.
paragraph 2...	Section 13 of Bill.
proviso	Section 40 of Bill.
7	Sections 7 and 8 of Bill.
8	Section 40 of Bill.
Sections 9, 10 and 11, paragraphs 1 and 2 ...	Sections 7 and 14 (*2*) of Bill.
Section 11, paragraph 3.	Section 28 (*f*) of Bill.
paragraph 4...	Section 28 (*e*) of Bill.
12: when Collector may be directed to take charge of estate. *(Repealed in Lower Provinces by Bengal Act IX of 1879.)*	Unnecessary. The Court of Wards can act in cases in which management by the Collector is desirable.
13	Section 44 of Bill.
14: when Collector may be directed to retain charge of shares and persons of certain minors. *(Repealed in Lower Provinces by Bengal Act IX of 1879, and in Central Provinces by Act XVII of 1885.)*	Unnecessary, as Chapter II is framed. See paragraph 12 of Statement of Objects and Reasons.
15: control of proceedings of Collector. *(Repealed in Lower Provinces by Bengal Act IX of 1879.)*	Unnecessary, as the Bill is framed.
16, paragraph 1...	Section 28 (*b*) of Bill.
paragraph 2...	Section 28 (*c*) of Bill.
paragraph 3...	Compare sections 29 and 30 of Bill.
17	Sections 28 (*d*) and 45 (*e*) and (*f*) of Bill.
18, paragraph 1...	Section 26 (*3*) of Bill.
paragraph 2...	Sections 24 and 25 of Bill.
19	Sections 29, 30 and 31 of Bill.
20: continuance of suit after disqualification ceases.	Will be covered by the Code of Civil Procedure.
21 *(Repealed in part in Lower Provinces by Bengal Act IX of 1879.)*	Sections 33 and 35 (*3*) of Bill.
22	Section 38 of Bill.
23, first sentence	Section 34 of Bill.
second sentence	Section 35 (*3*) and (*4*) of Bill.
24	Sections 28 (*f*) and 45 (*g*) of Bill.
25 *(Repealed in part in Lower Provinces by Bengal Act IV of 1870, section 86.)*	Sections 20, 28 (*e*) and 36 of Bill.
26	Section 4 (*1*) of Bill: and see paragraph 6 of Statement of Objects and Reasons.

Statement showing how the principal Enactments scheduled for repeal in the Guardians and Wards Bill have been reproduced in the Bill or otherwise dealt with—continued.

Enactments scheduled for repeal.	How reproduced or otherwise dealt with.
ACT XL OF 1858—*continued.*	
Section 27, paragraph 1, first sentence ...	Section 16 of Bill.
second sentence: guardians of females to be themselves females.	Not reproduced. See paragraph 19 of Statement of Objects and Reasons.
paragraph 2..	Section 35 (*1*) (*d*) and (*e*) of Bill.
28	Section 41 of Bill.
29, paragraph 1, first sentence ...	Sections 4 (*4*) and 9 of Bill.
second sentence ...	Section 3 of Bill.
paragraph 2 (*number and gender*) ...	Not reproduced. See the General Clauses Act, I. of 1868.
ACT IX OF 1861—	
Section 1, first sentence	Sections 7, 8, 9 and 10 of Bill.
second sentence	Section 11 (*1*) of Bill.
2	Section 12 of Bill.
3	Sections 7, 13 and 44 of Bill.
4: application of Code of Civil Procedure.	Not reproduced. See section 647 of the Code of Civil Procedure.
5	Section 41 of Bill.
6	Section 42 of Bill.
7	Section 3 of Bill.
8: definition of "Sadr Court" ...	Not reproduced. See the General Clauses Act, I. of 1868.
ACT XX OF 1864—	
Section 1	Sections 26 and 36 of Bill.
2, paragraph 1	Section 8 of Bill.
paragraph 2 } who to institute or defend suits on behalf	Left to be dealt with in the Bill to amend the Code of Civil Procedure. See paragraph 4 of Statement of Objects and Reasons.
proviso } of minors.	
3	Section 8 of Bill.
4	Section 9 of Bill.
5, paragraph 1	Section 11 (*1*) of Bill.
paragraph 2	Section 13 of Bill.
proviso	Section 40 of Bill.
6	Sections 7 and 8 of Bill.
7	Section 40 of Bill.
Sections 8, 9 and 10, paragraphs 1 and 2, and proviso.	Sections 7 and 14 (*2*) of Bill. See paragraph 20 of the Statement of Objects and Reasons.
Section 10, paragraph 3	Section 28 (*f*) of Bill.
10, paragraph 4...	Section 28 (*e*) of Bill.
11: when Collector may be directed to take charge of estate.	Unnecessary, as section 7 is framed.
12	Section 28 (*a*) of Bill.
13	Section 44 of Bill.
14: procedure when proprietor of estate under Collector's charge comes of age.	Unnecessary, as Chapter II. is framed. See paragraph 12 of Statement of Objects and Reasons.
15: control of proceedings of Collector. ...	Unnecessary, as the Bill is framed.
16, paragraph 1...	Section 28 (*b*) of Bill.
paragraph 2...	Section 28 (*c*) of Bill.
paragraph 3...	Compare sections 29 and 30 of Bill.
17	Sections 28 (*d*) and 45 (*e*) and (*f*) of Bill.
18, paragraph 1...	Section 26 (*3*) of Bill.
paragraph 2...	Sections 24 and 25 of Bill.
19	Sections 29, 30 and 31 of Bill.
20: continuance of suit after disqualification ceases.	Will be covered by the Code of Civil Procedure.

Statement showing how the principal Enactments scheduled for repeal in the Guardians and Wards Bill have been reproduced in the Bill or otherwise dealt with—continued.

Enactments scheduled for repeal.	How reproduced or otherwise dealt with.
ACT XX OF 1864—*continued.*	
Section 21	Sections 33 and 35 (*3*) of Bill.
22	Section 38 of Bill.
23, first sentence	Section 34 of Bill.
second sentence	Section 35 (*3*) and (*4*) of Bill.
24	Sections 28 (*f*) and 45 (*g*) of Bill.
25	Sections 20, 28 (*e*) and 36 of Bill.
26	Sections 20, 22 (*1*) and 36 of Bill.
27	
28	Section 28 (*e*) of Bill.
29: marriage of minors	Compare sections 20, 24 and 28 (*e*) of Bill.
30	Section 4 (*1*) of Bill: and see paragraph 6 of Statement of Objects and Reasons.
31, paragraph 1: as to guardians of married females.	Section 16 of Bill.
paragraph 1: as to guardians of females being themselves females.	Not reproduced. See paragraph 19 of Statement of Objects and Reasons.
paragraph 2: guardianship to cease when husband attains majority.	Section 35 (*1*) (*d*).
32: saving of Act XXXV of 1858 (*Lunatics.*)	Not reproduced.
33	Section 41 of Bill.
34, paragraph 1...	Sections 4 (*4*) and 9 of Bill.
paragraph 2...	Section 3 of Bill.
paragraph 3 (*number and gender*) ...	Not reproduced. See the General Clauses Act, I of 1868.
ACT XIII OF 1874:	
Section 1 (Formal)	
2 "Minor"	Section 4 (*1*) of Bill.
"Guardian"	Section 4 (*2*) of Bill.
"Court"	Sections 4 (*4*) and 9 of Bill.
3	Section 5 of Bill.
4, paragraph 1	Section 7 of Bill.
paragraph 2	Section 14 (*3*) of Bill.
paragraph 3	Section 14 (*4*) of Bill.
5, paragraph 1	Sections 8 and 10 (*1*) of Bill.
paragraph 2	Section 10 (*2*) of Bill.
paragraph 3	Section 11 (*1*) of Bill.
6	Section 12 of Bill.
7	Sections 7, 13 and 44 of Bill.
8, paragraph 1, first and second sentences: application of Code of Civil Procedure.	Not reproduced. See section 647 of the Code of Civil Procedure.
third sentence. ...	Section 41 of Bill.
paragraph 2 (Forms)	Not reproduced.
paragraph 3	Section 45 of Bill.
9	Section 42 of Bill.
10, clause (*a*)	Section 15 (*1*) and (*3*) of Bill.
clause (*b*)	Section 15 (*4*) of Bill.
clause (*c*)	Section 15 (*2*) of Bill.
11	Section 20 of Bill.
12	
13	Section 21 of Bill.
14, paragraph 1...	Section 22 (*1*) of Bill.
paragraph 2...	Section 37 of Bill.
15	Section 23 of Bill.
16	Sections 24 and 25 of Bill.
17	Section 28 (*e*) of Bill.
18, clauses (*a*) to (*d*)	Section 28 (*a*), (*c*), (*d*) and (*f*) of Bill.

Statement showing how the principal Enactments scheduled for repeal in the Guardians and Wards Bill have been reproduced in the Bill or otherwise dealt with—concluded.

Enactments scheduled for repeal.	How reproduced or otherwise dealt with.
ACT XIII OF 1874—*continued.*	
Section 18, clause (*e*)	Section 18 (*3*) of Bill.
19	Section 19 of Bill.
20	Sections 26 (*1*) and 36 (*1*) of Bill.
21	Section 32 of Bill.
22	Section 33 of Bill.
23	Section 34 of Bill.
24	Sections 33 (*2*) and 34 (*2*) of Bill.
25, paragraph 1...	Section 35 (*1*) of Bill.
paragraph 2...	Section 35 (*2*) of Bill.
Schedule (Forms)	Not reproduced.

S. HARVEY JAMES,

Officiating Secretary to the Government of India.

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PART VI.

BILLS OF THE GOVERNMENT OF INDIA.

LEGISLATIVE DEPARTMENT.

The following Bill was introduced into the Council of the Governor General of India for the purpose of making Laws and Regulations on the 19th March, 1886, and was referred to a Select Committee:—

Bill No. 5 of 1886.

THE GUARDIANS AND WARDS BILL, 1886.

CONTENTS.

The Guardians and Wards Bill, 1886.

(Chapter I.—Preliminary.—Sections 1-4.)

SECTION.

Termination of Guardianship.

CHAPTER IV.

SUPPLEMENTAL PROVISIONS.

THE SCHEDULE.—ENACTMENTS REPEALED.

A Bill to Consolidate and amend the law relating to Guardian and Ward.

WHEREAS it is expedient to consolidate and amend the law relating to guardian and ward; It is hereby enacted as follows:—

CHAPTER I.

PRELIMINARY.

Short title, local extent and commencement.

1. (*1*) This Act may be called the Guardians and Wards Act, 1886.

(*2*) It extends to the whole of British India except the Scheduled Districts; and

(*3*) It shall come into force on the first day of January, 1887.

(*4*) Any power conferred by this Act to make rules or issue orders may be exercised at any time after the passing of this Act; but a rule or order so made or issued shall not take effect until the Act comes into force.

Repeal.

2. (*1*) On and from the day on which this Act comes into force, the enactments mentioned in the schedule hereto annexed shall be repealed to the extent specified in the third column thereof.

(*2*) But all proceedings had, certificates granted, allowances assigned, obligations imposed and applications, appointments, orders and rules made under any of those enactments shall, so far as may be, be deemed to have been respectively had, granted, assigned, imposed and made under this Act.

(*3*) Any enactment or document referring to any of those enactments shall, so far as may be, be construed to refer to this Act or to the corresponding portion thereof.

Saving of jurisdiction of Courts of Wards and Chartered High Courts.

[Act XL, 1858, s. 2, and Act IX, 1861, s. 7.]

3. This Act shall be read subject to every enactment heretofore or hereafter passed relating to any Court of Wards by the Governor General in Council or by a Governor or Lieutenant-Governor in Council; and nothing in this Act shall be deemed to affect, or in any way derogate from, the jurisdiction or authority of any Court of Wards, or to take away any power possessed by any High Court established under the twenty-fourth and twenty-fifth of Victoria, chapter one hundred and four (*an Act for establishing High Courts of Judicature in India*).

Definitions.

[cf. Act IX. 1872, s. 11.]

4. In this Act, unless there is something repugnant in the subject or context,—

(*1*) "minor" means a person who has not reached the age of majority according to the law to which he is subject:

(*2*) "guardian" means a person having the care of the person of a minor or of his property, or of both his person and property:

(*3*) "ward" means a minor for whose person or property, or both, there is a guardian:

(*4*) "the Court" means the Court having jurisdiction to entertain an application under this Act for the appointment, or declaration of the title, of a guardian; and, where a guardian has been appointed or declared in pursuance of any such application, it means the Court which appointed or declared the guardian, or the High Court to which that Court is subordinate, or, in any matter relating to the person of the ward, the High Court having jurisdiction in the place where the ward for the time being resides:

(*5*) "Collector" means the chief officer in charge of the revenue-administration of a district, and includes any officer whom the Local Government, by notification in the official Gazette, may, from time to time, by name or by virtue of his office, appoint to be a Collector in any local area, or with respect to any class of persons, for all or any of the purposes of this Act:

(*6*) "prescribed" means prescribed by rules made by the High Court under this Act.

The Guardians and Wards Bill, 1886.

(Chapter II.—Appointment of Guardians.—Sections 5-11.)

CHAPTER II.

APPOINTMENT OF GUARDIANS.

[Act XIII, 1874, s. 3, cf. Act X., 1865, s. 47.] X of 1865.

Power of parents to appoint in case of persons subject to Indian Succession Act.

5. Where a minor is a person to whom the Indian Succession Act, 1865, applies, a guardian of his person or property, or both, may be appointed by will or other instrument to take effect on the death of the person appointing—

(*a*) if the minor is legitimate, by the father, or by either parent if the other is dead or incapable of acting;

(*b*) if the minor is illegitimate, by the mother.

[New.] X of 1865.

Saving of power to appoint in other cases.

6. Where a minor is a person to whom the Indian Succession Act, 1865, does not apply, nothing in this Act shall take away or derogate from any power to appoint a guardian of his person or property, or both, which is valid by the law to which he is subject.

[Act XL., 1858, ss. 7 and 9: Act IX, 1861, s. 3: Act XX., 1864, ss. 6 and 8: Act XIII, 1874, ss. 4 and 7.]

Power of the Court to make order as to guardianship.

7. Where it appears to the Court that provision ought to be made—

(*a*) for appointing a guardian of the person or property, or both, of a minor, or

(*b*) for declaring the title of a person claiming to be such a guardian,

the Court may make an order accordingly.

[Act XL., 1858, ss. 3 and 4: Act IX, 1861, s. 1: Act XX, 1864, ss. 2 and 3: Act XIII, 1874, s. 5.]

Persons entitled to apply for order.

8. An order may be made under the last foregoing section on the application of—

(*a*) the person desirous of being, or claiming to be, the guardian of the minor, or

(*b*) any relative or friend of the minor, or

(*c*) the Collector of the district or other local area within which the minor resides or has property, or

(*d*) the Collector having authority with respect to the class to which the minor belongs.

[Act XL, 1858, s. 29. Act IX, 1861, s. 1. Act XX, 1864, s. 34. Act XIII, 1874, s. 2. Act X, 1865, s. 264. Act V, 1881, s. 87.]

Court having jurisdiction to entertain the application.

9. (*1*) The application shall be made either to the High Court having jurisdiction in the place where the minor resides or has property, or to the District Court having jurisdiction in that place.

[Tagore Law Lectures, 1877, 156, and 157.]

(*2*) An application with respect to the guardianship of the person of a minor shall ordinarily be made to the Court having jurisdiction in the place where the minor resides.

[Act X, 1865, s. 241, and Act V, 1881, s. 57.]

(*3*) If an application with respect to the guardianship of the person or property, or both, of a minor is made to a Court other than that having jurisdiction in the place where the minor resides, the Court may refuse the application if in its opinion the application would be disposed of more justly or conveniently by any other Court having jurisdiction.

[Act XIII, 1874, s. 5.]

Form of application.

10. (*1*) The application shall be by petition setting forth the grounds of the application, and stating—

(*a*) the age and residence of the minor;

(*b*) the nature and value of his property (if any),

(*c*) where the person or property of the minor is not in the custody or possession of the petitioner, the person (if any) having the custody or possession of the person or property of the minor;

(*d*) what relations the minor has, and where they reside;

(*e*) whether an application has at any time been made to the Court or to any other Court with respect to the guardianship of the person or property, or both, of the minor, and, if so when, to what Court and with what result;

(*f*) where the application is to appoint a guardian, the qualifications of the proposed guardian and his willingness to act;

(*g*) where the application is to declare the title of a guardian, the grounds on which that title rests; and

(*h*) such other particulars, if any, as may be prescribed or as the nature of the application renders it necessary to state.

(*2*) The petition shall be verified by the petitioner or some other competent person in manner required by law for the verification of plaints, and may be received as evidence of the facts stated therein.

[Act XL, 1858, s. 6, and Act XX, 1864, s. 5.]

Procedure on admission of application.

11. (*1*) If the Court is satisfied that there is ground for proceeding on the application, it shall fix a day for the hearing thereof, and cause notice of the application and of the date fixed for the hearing—

[Act XIII, 1874, s. 5.] XIV of 1882.

(*a*) to be served, in the manner directed in the Code of Civil Procedure, on the person (if any) named in the petition as having the custody or being in possession of the person or property of the minor, and on any other person to whom, in the opinion of the Court, special notice of the application should be given; and

(*b*) to be posted on some conspicuous part of the court-house, and otherwise published in such manner as the Court, subject to any rules made by the High Court under this Act, thinks fit.

[Circular Order No. 30 of 1880—High Court, North-Western Provinces.]

(*2*) When any part of the property described in the petition is of such nature that a Court of Wards could assume the superintendence thereof, the Court shall also cause a notice as aforesaid to be served on the Collector in whose district the minor resides, and on every Collector in whose district any portion of that part of the property is situate, and the Collector may cause the notice to be published in any manner he deems fit.

The Guardians and Wards Bill, 1886.

(Chapter II.—Appointment of Guardians.—Sections 12-17.)

(Chapter III.—Duties, Rights and Liabilities of Guardians.—Sections 18-19.)

Act IX, 1861, s. 2, and Act XIII, 1874, s. 6.]

Power to make interlocutory order for production of minor and interim protection of his person and property.

12. The Court may direct that the person (if any) having the custody of the minor shall produce him at such place and time as it appoints, and may make such order for the temporary custody and protection of the person or property of the minor as it thinks proper.

[Act IX, 1861, s. 3 and Act XIII, 1874, s. 7.]

Hearing of evidence before making of order.

13. On the day fixed for the hearing of the application, or as soon afterwards as may be, the Court shall hear such evidence as may be adduced in support of or in opposition to the application.

[Act XIII, 1874, s. 21.]

Appointment of several guardians.

14. (*1*) If the law to which the minor is subject admits of his having two or more joint guardians of his person or property, or both, the Court may, if it thinks fit, appoint or declare them.

(*2*) Separate guardians may be appointed or declared of the person and of the property of a minor.

[Act XIII, 1874, s. 4.]

(*3*) If a minor has several properties, the Court may, if it thinks fit, appoint or declare a separate guardian for any one or more of the properties.

[Act XIII, 1874, s. 4.]

(*4*) If the Court appoints or declares a guardian for any property situate beyond the local limits of its jurisdiction, the Court having jurisdiction in the place where the property is situate shall accept the guardian as duly appointed or declared and give effect to the order appointing or declaring him.

[Act XIII, 1874, s. 10].

Matters to be considered by the Court in appointing guardian.

15. (*1*) In appointing or declaring the guardian of a minor the Court shall be guided by the law to which the minor is subject and by what appears to be, consistently with that law, for the best interest of the minor with respect to his mental, moral and temporal welfare.

(*2*) In considering what will be for the best interest of the minor, the Court shall have regard to his age, his relationship to the proposed guardian, the wishes of a deceased parent (if any), and any existing or previous connection of the proposed guardian with the person or property of the minor.

(*3*) If the minor is old enough to form an intelligent preference, the Court may consider that preference.

X of 1885.

(*4*) In the case of persons to whom the Indian Succession Act, 1865, applies, as between parents adversely claiming the guardianship, neither parent is entitled to it as of right: but other things being equal in such case, if the minor is of tender years, he should be given to the mother, and if he is of an age to require education and preparation for labour and business, then to the father.

(*5*) Where the minor is a member of an undivided Hindu family, special weight is to be attached to any claim which the managing member of the family may make to be appointed or declared guardian, and to any objection which he may take to an appointment or declaration asked for in an application. [New.]

(*6*) The Court shall not appoint a person to be guardian against his will.

Guardian of the person not to be appointed by the Court in certain cases.

16. Nothing in this Chapter shall authorise the Court to appoint or declare guardian of the person of a minor— [Act XL, 1858, s. 27: Act XX, 1864, s. 31: Act XIII, 1874, s. 25: and Act XVII, 1885, s. 8.]

(*a*) who is a married female cohabiting with her husband, or

(*b*) whose father is living and is not a minor or, in the opinion of the Court, unfit to perform, or incapable of performing, the duties of a guardian of the person of the minor, or

(*c*) whose property is under the superintendence of a Court of Wards competent to appoint a guardian of his person.

Guardian of property to be appointed by the Court subject to restrictions in case of certain minors.

17. Where under this Chapter the Court appoints or declares a guardian of the property of a minor who is a member of an undivided Hindu family, it shall, except where it is proved to the satisfaction of the Court that the interests of the minor have been actually imperilled, appoint or declare the guardian subject to such restrictions as will prevent him from interfering with the powers of the managing member of the family. [New.]

CHAPTER III.

DUTIES, RIGHTS AND LIABILITIES OF GUARDIANS.

General.

Fiduciary relation of guardian to ward.

18. (*1*) A guardian must act for the benefit of his ward. [Seton's Decrees, 739, and Act XIII, 1874, s. 18.]

(*2*) He cannot make any profit out of his office.

(*3*) With respect to the property of the ward, he stands in the position of trustee for the ward, and is responsible for any loss occasioned to the property by his wilful default or gross negligence.

(*4*) This fiduciary relation extends to and affects purchases by a guardian of the property of his ward immediately or soon after the ward has ceased to be a minor, and generally all transactions between them while the influence of the guardian still lasts or is recent.

Minor incompetent to act.

19. A minor is incompetent to act as guardian. [Act XIII, 1874, s. 19.]

The Guardians and Wards Bill, 1886.

(Chapter III.—Duties, Rights and Liabilities of Guardians.—Sections 20-25.)

Guardian of the Person.

[Act XIII, 1874, ss. 11 and 12.]

20. A guardian of the person of a ward is charged with the custody of the ward, and must look to his support, health and education, and such other matters as the law to which the ward is subject requires.

Duties of guardian of the person.

[Act XIII, 1874, s. 13.]

21. (*1*) If a ward leaves the custody of his guardian, he may be compelled by order of the Court to return to that custody.

Title of guardian to custody of ward.

(*2*) But the Court may refuse to make an order for his return to the custody of the guardian if it appears—

(*a*) that the ward has been ill-treated by the guardian; or

(*b*) that the conduct of the guardian in any other respect has rendered him unfit to have the custody of the ward; or

(*c*) that the ward is, on reasonable grounds not inconsistent with the law to which he is subject, unwilling to return, and, having attained to years of discretion, is capable of exercising a wise choice as to the custody in which he will remain.

[Eversley's Domestic Relations, 691-92.]

(*3*) The residence of a ward against the will of his guardian with a person who is not his guardian does not of itself terminate the guardianship.

[Act XIII, 1874, s. 14.]

22. (*1*) A guardian of the person appointed or declared by the Court shall not, without the leave of the Court by which he was appointed or declared, remove the ward from the limits of its jurisdiction, except for such temporary purposes as may be prescribed or for the purpose of placing him beyond those limits at an educational institution appointed by the Local Government administering the territories within which the Court is established as an institution to which a guardian may send a ward without the leave of the Court.

Removal of ward from jurisdiction.

(*2*) The leave granted by the Court under sub-section (*1*) may be special or general, and may be defined by the order granting it.

Guardian of Property.

[Act XIII, 1874, s. 15.]

23. (*1*) A guardian of the property of a ward must keep that property safely.

Duties of guardian of property.

(*2*) In the case of immoveable property, he must not suffer any waste, but must maintain the buildings (if any) thereon and their appurtenances out of the rents and profits of the property.

[Act XL, 1858, s. 18; Act XX, 1864, s. 18; and Act XIII, 1874, s. 16.]

24. Where a guardian of the property, of a ward has been appointed or declared by the Court, he shall not, without the previous permission of the Court,—

Limitation of powers of guardian of property appointed or declared by the Court.

(*a*) borrow for his ward; or

(*b*) mortgage, charge or transfer by sale, gift, exchange or otherwise any part of the immoveable property of his ward; or

(*c*) lease any part of that property for a term exceeding three years; or

(*d*) transfer any Government securities belonging to the ward, or the shares or other interest of the ward in any company; or

(*e*) dispose of any other part of the principal of the property of the ward:

Provided that the Court may, subject to any rules made by the High Court under this Act, exempt a guardian from the necessity of obtaining the permission of the Court under this section, either generally or in special circumstances, and as to either the whole or any specified part of the property of the ward. [Cf. Act V, 1881, s. 90.]

25. (*1*) Permission to the guardian to do any of the acts mentioned in the last foregoing section shall not be granted by the Court except in case of necessity or for an evident advantage to the ward. [New.]

Practice with respect to limitation of powers of guardian of property.

(*2*) The order granting the permission shall recite the necessity or advantage, as the case may be, describe the property with respect to which the act permitted is to be done, and specify such conditions, if any, as the Court may see fit to attach to the permission; and it shall be recorded, dated and signed by the Judge of the Court with his own hand, or, when from any cause he is prevented from recording the order with his own hand, shall be taken down in writing from his dictation and be dated and signed by him. [New.]

(*3*) The Court may in its discretion attach to the permission the following among other conditions, namely:— [New.]

(*a*) that a sale shall be made to the highest bidder by public auction, before the Court or some person specially appointed by the Court for that purpose, at a time and place to be specified by the Court, after such proclamation of the intended sale as the Court, subject to any rules made by the High Court under this Act, directs;

(*b*) that a lease shall not be made in consideration of a premium, or shall be made for such term of years and subject to such rents and covenants as the Court directs;

(*c*) that the whole or any part of the proceeds of the act permitted shall be paid into the Court by the guardian to be invested by the Court on prescribed securities or otherwise disposed of as the Court directs.

(*4*) Before granting permission to a guardian to do an act mentioned in the last foregoing section the Court may cause notice of the application for the permission to be given to any relative [New.]

The Guardians and Wards Bill, 1886.

(Chapter III.—Duties, Rights and Liabilities of Guardians.—Sections 26-31.)

or friend of the ward who should, in its opinion, receive notice thereof, and shall hear, and record the statement of, any person who appears in opposition to the application.

[Act XL, 1858, s. 2: [Act XX, 1864, s. 1: and Act XIII, 1874, s. 20.]

General powers of guardian of property.

26. (*1*) Where a guardian of the property of a ward has been appointed or declared by the Court, the Court may from time to time, by order, define, restrict or extend his powers with respect to the property of the ward in such manner and to such extent as it may consider to be for the advantage of the ward and consistent with the law to which the ward is subject.

(*2*) Subject to any such order and subject also to sections 17 and 24, a guardian appointed by or under a will or other instrument shall, with respect to the property of his ward, have such powers and be subject to such restrictions as are conferred or imposed on him by that instrument.

[Act II, 1882, s. 36.]

(*3*) Subject to the foregoing provisions of this section, a guardian of the property of a ward may do all acts which are reasonable and proper for the realization, protection or benefit of the property of the ward and are allowed by the law to which the ward is subject.

[Act II, 1882, s. 34.]

Right of guardian to apply to the Court for opinion in management of property of ward.

27. (*1*) A guardian may apply by petition to the Court for its opinion, advice or direction on any present questions respecting the management or administration of the property of his ward, other than questions not proper, in the opinion of the Court, for summary disposal.

(*2*) A copy of the petition shall be served upon, and the hearing thereof may be attended by, such of the persons interested in the application as the Court thinks fit.

(*3*) The guardian stating in good faith the facts in the petition and acting upon the opinion, advice or direction given by the Court shall be deemed, so far as regards his own responsibility, to have discharged his duty as guardian in the subject-matter of the application.

[Act XIII, 1874, s. 18.]

Obligations on, and privileges of, guardian of property.

28. Where a guardian of the property of a ward has been appointed or declared by the Court, he shall—

[Act X, 1865, s. 256, and Act V, 1881, s. 78.]

(*a*) if so required by the Court, give a bond, as nearly may be in the prescribed form, to the Judge of the Court to enure for the benefit of the Judge for the time being, with or without sureties, as may be prescribed, engaging duly to account for what he may receive in respect of the property of the ward;

[Act XL, 1858, s. 16, and Act XX, 1864, s. 16.]

(*b*) deliver to the Court, within six months from the date of his appointment or declaration by the Court, or within such shorter time as the Court directs, a statement of the immoveable property belonging to the ward, of the money and other moveable property which he has received on behalf of the ward up to the date of delivering the statement, and of the debts due on that date to or from the ward;

[Act XL, 1858, s. 16, and Act XX, 1864, s. 16.]

(*c*) exhibit his accounts in the Court at such times and in such form as the Court directs;

[Act XL, 1858, s. 17, and Act XX, 1864, s. 17.]

(*d*) if the Court so directs, pay into the Court the balance due from him on those accounts, or so much thereof as the Court directs, in the manner in which money is required by any rules for the time being in force to be paid into that Court;

[Act XL, 1858, s. 11: Act XX, 1864, s. 10: and Act XIII, 1874, s. 17.]

(*e*) apply for the maintenance, education and advancement of the ward such portion of the income of the property of the ward as the Court directs, and, if the Court so directs, the whole or any part of the principal of that property; and

[Act XL, 1858, s. 24, and Act XX, 1864, s. 24.]

(*f*) be entitled to such allowance, if any, as the Court thinks fit for his care and pains in the execution of his duties.

[Act X, 1865, s. 257, and Act V, 1881, s. 79, I. L. R. 5 All. 248.]

Suit against guardian where administration-bond was taken.

29. Where a guardian has given a bond duly to account for what he may receive in respect of the property of his ward, the Court may at any time, on being satisfied that the engagement of the bond has not been kept, and upon such terms as to security, or providing that the money received be paid into the Court, or otherwise, as the Court thinks fit, assign the bond to some proper person, who shall thereupon be entitled to sue on the bond in his own name as if the bond had been originally given to him instead of to the Judge of the Court, and shall be entitled to recover thereon, as trustee for the ward, the full amount recoverable in respect of any breach thereof.

[Act XL, 1858, s. 19, and Act XX, 1864, s. 19.]

Suit against guardian where administration-bond was not taken.

30. Where a guardian has not given a bond as aforesaid, any person, with the leave of the Court, may, as next friend, at any time during the continuance of the minority of the ward, and upon such terms as aforesaid, institute a suit against the guardian, or, in case of his death, against his legal representative, for an account of what the guardian has received in respect of the property of the ward, and may recover in the suit, as trustee for the ward, the full amount found in the suit to have been received by the guardian and not to have been duly accounted for.

[Act XL, 1858, s. 19, and Act XX, 1864, s. 19.]

General liability of guardian as trustee.

31. Nothing in either of the last two foregoing sections shall be construed to deprive a ward or his legal representative of any remedy against his guardian, or the legal representative of the guardian, which, not being expressly provided in either of those sections, any other beneficiary or his legal representative would have against his trustee or the legal representative of the trustee.

The Guardians and Wards Bill, 1886.

(*Chapter III.—Duties, Rights and Liabilities of Guardians.—Sections 32-35.*)

(*Chapter IV.—Supplemental Provisions.—Sections 36-38.*)

Termination of Guardianship.

[Act XIII, 1874, s. 21.]

Right of survivorship among joint guardians.

32. On the death of one of two or more joint guardians, the guardianship continues to the survivor or survivors until a further appointment is made by the Court.

[Act XL, 1858, s. 21: Act XX, 1864, s. 21: and Act XIII, 1874, ss. 22 and 24.]

Removal of guardian.

33. (*1*) The Court may, on the application of any person interested, or of its own motion, remove a guardian for any of the following causes, namely:—

(*a*) for abuse of his trust;

(*b*) for continued failure to perform its duties;

(*c*) for incapacity to perform its duties;

(*d*) for gross immorality;

(*e*) for having an interest adverse to the faithful performance of his duties;

(*f*) for removal from the local limits of the jurisdiction of the Court;

(*g*) by reason of the arrival within those limits of some person whose guardianship the Court may think likely to be more beneficial to the ward than that of his guardian; or

(*h*) in the case of a guardian of the property, for insolvency.

(*2*) When a guardian has been removed for any such cause, the Court may appoint a successor to him under the provisions of Chapter II.

[Act XL 1858, s. 23: Act XX, 1864, s. 23: and Act XIII, 1874, ss. 23 and 24.]

Discharge of guardian.

34. (*1*) If a guardian desires to resign his office, he may apply to the Court to be discharged.

(*2*) If the Court finds that there is some other proper person whom it may appoint to be guardian under the provisions of Chapter II, it shall discharge the applicant from the guardianship and appoint the other person in his place.

[Act XL, 1858, s. 27: Act XX, 1864, s. 31: and Act XIII, 1874, s. 25.]

Cessation of authority of guardian.

35. (*1*) The power of a guardian of the person ceases—

(*a*) by his removal or discharge;

(*b*) by the Court of Wards assuming superintendence of the person of the ward;

(*c*) by the ward ceasing to be a minor;

(*d*) in the case of a female ward, by her marriage followed by cohabitation with her husband; or

(*e*) in the case of a ward whose father was a minor, or deemed unfit to perform, or incapable of performing, the duties of a guardian of the person of the ward, by the father ceasing to be a minor or, as the case may be, to be deemed unfit or incapable as aforesaid.

(*2*) The power of a guardian of the property ceases—

(*a*) by his removal or discharge;

(*b*) by the Court of Wards assuming superintendence of the property of the ward; or

(*c*) by the ward ceasing to be a minor.

(*3*) When for any cause a person ceases to be a guardian, the Court may require him to deliver as it directs any property in his possession belonging to the ward. [Act XL, 1858, s. 21, and Act XX, 1864. s. 21.]

(*4*) When he has delivered as the Court directs the property, if any, in his possession belonging to the ward, the Court may declare him to be discharged from his liabilities as guardian, save as regards any fraud which may subsequently be discovered. [Act XL, 1858, s. 23, and Act XX, 1864, s. 23.]

CHAPTER IV.

SUPPLEMENTAL PROVISIONS.

Orders for regulating conduct or proceedings of guardians, and enforcement of these orders.

36. (*1*) The Court may, on the application of any person interested or of its own motion, make an order regulating the conduct or proceedings of any guardian who has not been appointed by a Court of Wards, whether the guardian has been appointed or declared by the Court under this Act or not. [Act XL, 1858, s. 2: Act XX, 1864, s. 1: Act XIII, 1874, s. 20: and Act XIV, 1882, s. 493.]

(*2*) In case of disobedience to an order made under sub-section (*1*), the order may be enforced in the same manner as an injunction granted under section 492 or section 493 of the Code of Civil Procedure, as if the guardian were the defendant and the ward the plaintiff. XIV of 1882.

Penalty for removal of ward from jurisdiction.

37. If, for the purpose or with the effect of preventing the Court from exercising its authority with respect to a ward, the guardian of the ward removes him from the limits of the jurisdiction of the Court in contravention of the prohibition contained in section 22, he shall be liable, by order of the Court, to fine not exceeding one thousand rupees, or to imprisonment for a term which may extend to six months, or to both. [Act XIII, 1874, s. 14.]

Penalty for failure to account.

38. If a guardian fails to deliver to the Court, within six months from the date of his appointment or declaration by the Court, or within such shorter time as the Court directs, the statement mentioned in clause (*b*) of section 28, or to exhibit his accounts in the Court, as required by clause (*c*) of that section, or to pay into the Court the balance due from him on those accounts, as required by clause (*d*) of that section, [Act XL, 1858, s. 22, and Act XX, 1864, s. 22.]

or if a person who has ceased to be a guardian fails, on the requisition of the Court, to deliver as the Court directs any property in his possession belonging to the ward,

he shall be liable, by order of the Court, to fine not exceeding one hundred rupees, and, in case of recusancy, to further fine not exceeding fifty rupees for each day after the first during which the default continues and to detention in the civil jail until he consents to deliver the statement, or exhibit the accounts, or pay the balance, or deliver the property, as the case may be.

The Guardians and Wards Bill, 1886.

(Chapter IV.—Supplemental Provisions.—Sections 39-46.)

(The Schedule.—Enactments repealed.)

[Act V, 1886, s. 14.]

Saving of prosecutions under other laws.

39. Nothing in this Act shall prevent a person from being prosecuted under any other law for an act or omission which constitutes an offence against this Act, or from being liable under that other law to any other or higher punishment or penalty than that provided by this Act:

Provided that a person shall not be punished twice for the same offence.

[Act XL, 1858, ss. 6 and 8, and Act XX, 1864, ss. 5 and 7.]

Reports by Collectors and Subordinate Courts.

40. The Court may call upon the Collector, or upon any Court subordinate to the Court, for a report on any matter arising in any proceeding under this Act and treat the report as evidence.

[Act XL, 1858, s. 28: Act XX, 1864, s. 33; and Act IX, 1861, s. 5.]

Orders appealable.

41. An appeal shall lie to the High Court from an order made by a District Court—

(*a*) under section 7, appointing or declaring or refusing to appoint or declare a guardian; or

(*b*) under section 9, sub-section (*3*), refusing an application; or

(*c*) under section 21, making or refusing to make an order for the return of a ward to the custody of his guardian; or

(*d*) under section 24, refusing to grant permission to the guardian to do an act mentioned in that section; or

(*e*) under section 26, sub-section (*1*), defining, restricting or extending the powers of a guardian; or

(*f*) under section 33, sub-section (*1*), removing a guardian; or

(*g*) under section 34, refusing to discharge a guardian; or

(*h*) under section 36, regulating the conduct or proceedings of a guardian, or enforcing the order; or

(*i*) under section 37 or section 38, imposing a penalty.

[Act IX, 1861, s. 6, and Act XIII, 1874, s. 9.]

Finality of other orders.

42. Save as provided by the last foregoing section and by section 622 of the Code of Civil Procedure, an order made under this Act shall be final, and shall not be liable to be contested by suit or otherwise.

XIV of 1882.

[Act X, 1865, s. 241, and Act V, 1881, s. 57.]

Power of High Court to refuse applications capable of being dealt with by another Court.

43. The High Court may refuse an application made to it under this Act if in its opinion the application would be disposed of more justly or conveniently by any other Court having jurisdiction.

[Act XL, 1858, s. 13, and Act XX, 1864, s. 13.]

Costs.

44. The costs of any proceeding under this Act shall, subject to any rules made by the High Court under this Act, be in the discretion of the Court in which the proceeding is held.

[New cf. Act XIII, 1874, s. 8.]

Power of High Court to make rules.

45. In addition to any other power to make rules conferred expressly or impliedly by this Act, the High Court may from time to time make rules—

(*a*) as to the procedure to be followed with respect to applications of guardians for permission to do acts mentioned in section 24;

(*b*) as to the security to be required from guardians;

(*c*) as to the preservation of statements and accounts delivered and exhibited by guardians;

(*d*) as to the inspection of those statements and accounts by persons interested;

(*e*) as to the custody of money, and securities for money, belonging to wards;

(*f*) as to the securities on which money belonging to wards may be invested;

(*g*) as to allowances to be granted to guardians for their care and pains in the execution of their duties; and

(*h*) generally, for carrying out the purposes of this Act.

[New.]

Applicability of Act to guardians already appointed by Court.

46. A guardian appointed by, or holding a certificate of administration from, a Civil Court under any enactment repealed by this Act shall, save as may be prescribed, be subject to the provisions of this Act, and of the rules made under it, as if he had been appointed under Chapter II.

THE SCHEDULE.

ENACTMENTS REPEALED.

(See section 2.)

Number and year.	Title or subject.	Extent of repeal.
	Acts of the Governor General in Council.	
XIV of 1858.	Minors (Madras) ...	The whole.
XL of 1858.	Minors (Bengal) ...	So much as has not been repealed.
XX of 1864.	Minors (Bombay) ...	The whole.
IX of 1861.	Minors	The whole.
VII of 1870.	Court-fees	Section 19 H, and article 10 of Schedule I.
IV of 1872.	Punjab Laws	So far as it relates to Act XL of 1858.
XIX of 1873.	North-Western Provinces Land-revenue.	Section 258.
XIII of 1874.	European British Minors.	The whole.
XV of 1874.	Laws Local Extent ...	So far as it relates to any enactment repealed by this Act.
XVII of 1875.	Burma Courts	Section 96.
XX of 1875.	Central Provinces Laws.	So far as it relates to Act XL of 1858.
XVIII of 1876.	Oudh Laws	So far as it relates to Act XL of 1858.
	Madras Regulations.	
V of 1804.	Court of Wards ...	Section 20 and so much of sections 21 and 22 as relates to persons and property of minors not subject to the superintendence of the Court of Wards.
X of 1831.	Minors' Estates ...	Section 3.

STATEMENT OF OBJECTS AND REASONS.

This Bill to consolidate and amend the law relating to Guardian and Ward is based on opinions elicited by a reference to Local Governments and High Courts on the subject of certain defects in the law relating to the guardianship of minors, and its object is to provide a law of Guardian and Ward applicable as far as possible to all classes of Her Majesty's subjects in British India.

2. Among the enactments which the Bill will supersede are Act XL of 1858 and portions of the Madras Code, relating to minors in the Presidencies of Bengal and Madras who are not European British subjects and are not under the superintendence of a Court of Wards; Act XX of 1864, relating to minors in the Presidency of Bombay who are not European British subjects; Act IX of 1861, relating to the custody and guardianship of minors who are not European British subjects; and Act XIII of 1874, relating to the guardianship of European British minors in territories beyond the jurisdiction of the chartered High Courts.

3. The Bill, which follows generally the frame of Act XIII of 1874, is drawn as applicable to all District Courts and High Courts (including the chartered High Courts) and to minors of all creeds and races. But it does not take away any of the powers at present possessed by the chartered High Courts, and it provides that, in the selection of guardians and other matters, regard shall be had to the personal law of the minor. The jurisdiction and authority of Courts of Wards are expressly saved and will not be in any way affected by the proposed law.

4. One effect of the assimilation of the law will be to do away with the rule, which obtains in the Presidencies of Bengal and Bombay, that no person shall be entitled to institute or defend any suit connected with a minor's estate of which he claims the charge until he has obtained a certificate of administration. It is proposed that suits by and against minors shall be regulated by Chapter XXXI of the Code of Civil Procedure, and that, in a Bill which is to be introduced to amend that Code, provision be inserted conferring, among other privileges, on a guardian who has been appointed, or whose title has been declared, under the Guardians and Wards law, a preferential right to be appointed next friend or guardian for the suit.

5. The several sections of the Bill which appear to call for remark will now be noticed in consecutive order.

6. *Section 4, clause (1).*—In connection with section 26, Act XL of 1858, section 30, Act XX of 1864, and section 2, Act XIII of 1874, the question arose whether the age of majority should be dealt with in the Bill. As there was no necessity to deal with it, it was considered expedient to avoid the difficulty of doing so by defining "minor," in the terms of section 11 of the Indian Contract Act, 1872, as a person who has not reached the age of majority according to the law to which he is subject.

7. *Section 4, clause (2).*—"Guardian" has been so defined as to mean any person having the care of the person of a minor or of his property, or of both his person and property. The Bill, therefore, relates to guardians generally except where it is expressed to relate to particular classes of guardians.

8. *Section 5.*—This section follows Act XIII of 1874, which, in recognising in certain circumstances the right of a mother to appoint a guardian, was based on the New York Civil Code. The section goes beyond section 47 of the Indian Succession Act and beyond the English law. But under the English law an appointment by a mother is not now wholly ineffectual, and is likely at no distant date to be declared to be valid except in so far as it may interfere with an appointment by the father.

9. *Sections 9 and 43.*—The High Court and District Court will have concurrent jurisdiction, but the High Court may refuse an application with respect to the guardianship of a minor if in its opinion the application would be disposed of more justly or conveniently by a District Court. Where the application is with respect to the guardianship of the person of a minor, it is ordinarily to be made to the Court having jurisdiction in the place where the minor resides, that being the Court which can most effectively discharge the duties incident to the appointment of a guardian to the person of the minor.

10. *Section 11, sub-section (2).*—The sub-section follows an order made by the High Court of Judicature for the North-Western Provinces with a view to facilitating the discharge by Collectors of their duty of ascertaining and reporting to the Court of Wards from time to time what proprietors may come within the description of disqualified landholders.

11. *Section 14, sub-section (4).*—The rule laid down in this sub-section is, as explained by Sir Arthur Hobhouse with respect to the corresponding section in Act XIII. of 1874, based solely on grounds of convenience.

12. *Section 15, sub-section (5), and section 17.*—As regards a minor who is a member of an undivided Hindu family, it seems to be generally admitted that it is desirable, as a rule, to leave him to his natural guardians without interference. But such a minor has certain rights in respect of the family property, and those rights are capable of being protected by a guardian. The guardian could not assume the management of the common property, and possibly he would, owing to the constitution of the co-ownership, be debarred from taking directly even a share in the management, and be confined to a mere power of control from without and a right in the last resort to demand a partition. But even this limited authority might in some cases be of great importance.

As regards the view hitherto taken by the Courts on this subject, it has indeed been held by the High Courts at Fort William and Bombay that Acts XL of 1858 and XX of 1864 could not be applied where the minor had no rights except as a member of an undivided Hindu family (I. L. R. 5 Cal. 219 and 3 Bom. 431, and 12 Bom. H. C. Rep. 247). Some doubt has been thrown on this view by the case

before the Privy Council reported in I. L. R 8 Cal. 656 (I. L. R. 6 Bom. 595 and 8 Bom. 396); but in any case it is a view which seems to be based on the peculiar wording of those Acts, which have been construed as contemplating an actual and (perhaps) corporeal taking charge of and management of some tangible property. In other words, these cases merely decide that under the particular Acts a manager cannot be appointed for a minor member of a pure joint family, not that such a manager is a thing inconceivable or impossible (I. L. R. 7 Cal. 369).

As regards the provisions of certain enactments which allow the Court of Wards to take charge only of the estate of a minor who is a sole owner (Act IV, 1872, section 35, Act XVII, 1876, section 161, and Bengal Act IX, 1879, section 7), they are to be accounted for by the fact that these enactments were designed mainly to guard against the risk of loss of revenue from an estate being left without any competent person in charge of it. That it was not considered impossible to take charge of the interest of a minor shareholder is manifest from Madras Regulations V of 1804, section 20, and X of 1831, section 3, and from the circumstance that section 14 of Act XL of 1858 and other similar enactments provide for the Collector taking charge of the share of a co-owner who is still a minor on the estate escaping from the management of the Court of Wards owing to the other co-owners having come of age. The Courts of Wards in the North-Western Provinces (Act XIX of 1873) and Central Provinces (Act XVII of 1885) are not precluded from assuming superintendence of the interest of a disqualified person who is a co-owner in an estate with other persons who are not disqualified.

It may be gathered from the proceedings of the Legislative Council, 1854-55, pages 672 *et seq.*, that it was the intention of the framers of Act XL of 1858 that the Civil Court should appoint guardians for minors owning shares in estates, and it would seem that it is only owing to the peculiar wording of the Act, coupled perhaps with a natural disinclination on the part of the Courts to interfere between joint-owners, that that intention has been defeated.

13. *Section 18.*—This section lays down certain general propositions based on the fact that guardianship is a trust, and that the relationship between guardian and ward is one *uberrimæ fidei*, not only while it lasts, but even after it has ceased to exist.

14. *Sections 24 and 25.*—These sections are based on section 18 of the Acts of 1858 and 1864 and the corresponding section of the Act of 1874, on certain provisions in the Code of Lower Canada, and on suggestions received for the amendment of the Acts of 1858 and 1864. They provide that a guardian who has been appointed, or whose title has been declared, by the Court, shall not borrow for his ward, or transfer any part of the principal of his property, without the permission of the Court, and that the Court, before granting its permission, shall satisfy itself that the transaction proposed is either necessary or for the evident advantage of the ward, and, when granting the permission, shall itself record an order setting forth the necessity or advantage and the conditions subject to which it permits the loan to be taken or the transfer to be effected (I. L. R. 5 Cal. 363 and 6 Cal. 161).

These sections will be supplemented by rules made by the High Court under section 44.

15. *Section 28, clause (a), and section 29.*—These provisions are suggested by the case reported at I. L. R. 5 All. 248.

16. *Section 32.*—The rule contained in this section follows from guardianship being a trust. Though the right of survivorship is not acknowledged in England in the case of guardians appointed by the Court of Chancery, yet in practice the survivor or survivors will be re-elected by the Court without a reference. In America there is the right of survivorship among guardians appointed by the Court of Chancery.

17. *Section 33.*—A testamentary guardian may be removed under this section.

18. *Section 41.*—The cases reported at 15 W. R. 492 and 22 W. R. 479 have suggested the specification of the orders from which an appeal shall lie.

19. Acts XL of 1858 and XX of 1864 provide, in sections 27 and 31, respectively, that nothing in those Acts shall authorise the appointment of any person other than a female as the guardian of the person of a female. The cases reported at I. L. R. 10 Cal. 15 and 11 Cal. 574, and the remarks at pages 213-14 of Sayyid Amir Ali's *Personal Law of Muhammadans*, seem to render the re-enactment of the provision inexpedient. Section 15 of the Bill specifies the matters by which the Court is to be guided in appointing a guardian, and one of those matters is the law to which the minor is subject.

20. The provision of Act XX of 1864, that the legal heir of a minor, or the person next in succession to his property, may not be appointed guardian of the person of the minor, has not been repeated. It is considered that the appointment of such persons should not be absolutely prohibited. This was the opinion of the Supreme Council when Act XL of 1858 was about to be enacted (Proceedings of Legislative Council, 1858, pages 576-77), and is the opinion of the Hon'ble Mr. M. Melvill.

21. If the Bill becomes law in its present form, article 10 of schedule I. of the Court-fees Act, 1870, which applies only to the Presidencies of Bengal and Bombay, will become obsolete. It has, therefore, been included in the schedule of enactments to be repealed.

22. A table is appended showing how the principal enactments scheduled for repeal have been reproduced in the Bill or otherwise dealt with.

C. P. ILBERT.

The 12th March 1886.

Statement showing how the principal Enactments scheduled for repeal in the Guardians and Wards Bill have been reproduced in the Bill or otherwise dealt with.

Enactments scheduled for repeal.	How reproduced or otherwise dealt with.
ACT XIV OF 1858—	
Section 1	Sections 20, 28 (*e*) and 36 of Bill.
2	
3	Section 21 of Bill.
4	Sections 41 and 42 of Bill.
ACT XL OF 1858—	
Section 1	Repealed by Act XIV of 1870.
2	Sections 3, 26 and 36 of Bill.
3, paragraph 1...	Section 8 of Bill.
paragraph 2 } who to institute or de-	Left to be dealt with in the Bill to amend the
proviso } fend suits on behalf of minors.	Code of Civil Procedure. See paragraph 4 of Statement of Objects and Reasons.
4	Section 8 of Bill.
5	Section 9 of Bill.
6, paragraph 1...	Section 11 (*1*) of Bill.
paragraph 2...	Section 13 of Bill.
proviso	Section 40 of Bill.
7	Sections 7 and 8 of Bill.
8	Section 40 of Bill.
Sections 9, 10 and 11, paragraphs 1 and 2 ...	Sections 7 and 14 (*2*) of Bill.
Section 11, paragraph 3.	Section 28 (*f*) of Bill.
paragraph 4...	Section 28 (*e*) of Bill.
12: when Collector may be directed to take charge of estate. *(Repealed in Lower Provinces by Bengal Act IX of 1879.)*	Unnecessary. The Court of Wards can act in cases in which management by the Collector is desirable.
13	Section 44 of Bill.
14: when Collector may be directed to retain charge of shares and persons of certain minors. *(Repealed in Lower Provinces by Bengal Act IX of 1879, and in Central Provinces by Act XVII of 1885.)*	Unnecessary, as Chapter II is framed. See paragraph 12 of Statement of Objects and Reasons.
15: control of proceedings of Collector. *(Repealed in Lower Provinces by Bengal Act IX of 1879.)*	Unnecessary, as the Bill is framed.
16, paragraph 1..	Section 28 (*b*) of Bill.
paragraph 2...	Section 28 (*c*) of Bill.
paragraph 3...	Compare sections 29 and 30 of Bill.
17	Sections 28 (*d*) and 45 (*e*) and (*f*) of Bill.
18, paragraph 1...	Section 26 (*3*) of Bill.
paragraph 2...	Sections 24 and 25 of Bill.
19	Sections 29, 30 and 31 of Bill.
20: continuance of suit after disqualification ceases.	Will be covered by the Code of Civil Procedure.
21 *(Repealed in part in Lower Provinces by Bengal Act IX of 1879.)*	Sections 33 and 35 (*3*) of Bill.
22	Section 38 of Bill.
23, first sentence	Section 34 of Bill.
second sentence	Section 35 (*3*) and (*4*) of Bill.
24	Sections 28 (*f*) and 45 (*g*) of Bill.
25 *(Repealed in part in Lower Provinces by Bengal Act IV of 1870, section 86.)*	Sections 20, 28 (*e*) and 36 of Bill.
26	Section 4 (*1*) of Bill: and see paragraph 6 of Statement of Objects and Reasons.

Statement showing how the principal Enactments scheduled for repeal in the Guardians and Wards Bill have been reproduced in the Bill or otherwise dealt with—continued.

Enactments scheduled for repeal.	How reproduced or otherwise dealt with.
ACT XL OF 1858—*continued.*	
Section 27, paragraph 1, first sentence ...	Section 16 of Bill.
second sentence: guardians of females to be themselves females.	Not reproduced. See paragraph 19 of Statement of Objects and Reasons.
paragraph 2..	Section 35 (*1*) (*d*) and (*e*) of Bill.
28	Section 41 of Bill.
29, paragraph 1, first sentence ...	Sections 4 (*4*) and 9 of Bill.
second sentence ...	Section 3 of Bill.
paragraph 2 (*number and gender*) ...	Not reproduced. See the General Clauses Act, I. of 1868.
ACT IX OF 1861—	
Section 1, first sentence	Sections 7, 8, 9 and 10 of Bill.
second sentence	Section 11 (*1*) of Bill.
2	Section 12 of Bill.
3	Sections 7, 13 and 44 of Bill.
4: application of Code of Civil Procedure.	Not reproduced. See section 647 of the Code of Civil Procedure.
5	Section 41 of Bill.
6	Section 42 of Bill.
7	Section 3 of Bill.
8: definition of "Sadr Court" ...	Not reproduced. See the General Clauses Act, I. of 1868.
ACT XX OF 1864—	
Section 1	Sections 26 and 36 of Bill.
2, paragraph 1	Section 8 of Bill.
paragraph 2, proviso } who to institute or defend suits on behalf of minors.	Left to be dealt with in the Bill to amend the Code of Civil Procedure. See paragraph 4 of Statement of Objects and Reasons.
3	Section 8 of Bill.
4	Section 9 of Bill.
5, paragraph 1	Section 11 (*1*) of Bill.
paragraph 2	Section 13 of Bill.
proviso	Section 40 of Bill.
6	Sections 7 and 8 of Bill.
7	Section 40 of Bill.
Sections 8, 9 and 10, paragraphs 1 and 2, and proviso.	Sections 7 and 14 (*2*) of Bill. See paragraph 20 of the Statement of Objects and Reasons.
Section 10, paragraph 3	Section 28 (*f*) of Bill.
10, paragraph 4...	Section 28 (*e*) of Bill.
11: when Collector may be directed to take charge of estate.	Unnecessary, as section 7 is framed.
12	Section 28 (*a*) of Bill.
13	Section 44 of Bill.
14: procedure when proprietor of estate under Collector's charge comes of age.	Unnecessary, as Chapter II. is framed. See paragraph 12 of Statement of Objects and Reasons.
15: control of proceedings of Collector. ...	Unnecessary, as the Bill is framed.
16, paragraph 1...	Section 28 (*b*) of Bill.
paragraph 2...	Section 28 (*c*) of Bill.
paragraph 3...	Compare sections 29 and 30 of Bill.
17	Sections 28 (*d*) and 45 (*e*) and (*f*) of Bill.
18, paragraph 1...	Section 26 (*3*) of Bill.
paragraph 2...	Sections 24 and 25 of Bill.
19	Sections 29, 30 and 31 of Bill.
20: continuance of suit after disqualification ceases.	Will be covered by the Code of Civil Procedure.

Statement showing how the principal Enactments scheduled for repeal in the Guardians and Wards Bill have been reproduced in the bill or otherwise dealt with—continued.

Enactments scheduled for repeal.	How reproduced or otherwise dealt with.
ACT XX OF 1864—*continued.*	
Section 21	Sections 33 and 35 (*3*) of Bill.
22	Section 38 of Bill.
23, first sentence	Section 34 of Bill.
second sentence	Section 35 (*3*) and (*4*) of Bill.
24	Sections 28 (*f*) and 45 (*g*) of Bill.
25	Sections 20, 28 (*c*) and 36 of Bill.
26	Sections 20, 22 (*1*) and 36 of Bill.
27	
28	Section 28 (*c*) of Bill.
29: marriage of minors	Compare sections 20, 24 and 28 (*c*) of Bill.
30	Section 4 (*1*) of Bill: and see paragraph 6 of Statement of Objects and Reasons.
31, paragraph 1: as to guardians of married females.	Section 16 of Bill.
paragraph 1: as to guardians of females being themselves females.	Not reproduced. See paragraph 19 of Statement of Objects and Reasons.
paragraph 2: guardianship to cease when husband attains majority.	Section 35 (*1*) (*d*).
32: saving of Act XXXV of 1858 (*Lunatics.*)	Not reproduced.
33	Section 41 of Bill.
34, paragraph 1...	Sections 4 (*4*) and 9 of Bill.
paragraph 2...	Section 3 of Bill.
paragraph 3 (*number and gender*) ...	Not reproduced. See the General Clauses Act, I of 1868.
ACT XIII OF 1874:	
Section 1 (Formal)	
2 "Minor"	Section 4 (*1*) of Bill.
"Guardian"	Section 4 (*2*) of Bill.
"Court"	Sections 4 (*4*) and 9 of Bill.
3	Section 5 of Bill.
4, paragraph 1	Section 7 of Bill.
paragraph 2	Section 14 (*3*) of Bill.
paragraph 3	Section 14 (*4*) of Bill.
5, paragraph 1	Sections 8 and 10 (*1*) of Bill.
paragraph 2	Section 10 (*2*) of Bill.
paragraph 3	Section 11 (*1*) of Bill.
6	Section 12 of Bill.
7	Sections 7, 13 and 44 of Bill.
8, paragraph 1, first and second sentences: application of Code of Civil Procedure.	Not reproduced. See section 647 of the Code of Civil Procedure.
third sentence. ...	Section 41 of Bill.
paragraph 2 (Forms)	Not reproduced.
paragraph 3	Section 45 of Bill.
9	Section 42 of Bill.
10, clause (*a*)	Section 15 (*1*) and (*3*) of Bill.
clause (*b*)	Section 15 (*4*) of Bill.
clause (*c*)	Section 15 (*2*) of Bill.
11	Section 20 of Bill.
12	
13	Section 21 of Bill.
14, paragraph 1...	Section 22 (*1*) of Bill.
paragraph 2...	Section 37 of Bill.
15	Section 23 of Bill.
16	Sections 24 and 25 of Bill.
17	Section 28 (*c*) of Bill.
18, clauses (*a*) to (*d*)	Section 28 (*a*), (*c*), (*d*) and (*f*) of Bill.

Statement showing how the principal Enactments scheduled for repeal in the Guardians and Wards Bill have been reproduced in the Bill or otherwise dealt with—concluded.

Enactments scheduled for repeal.	How reproduced or otherwise dealt with.
ACT XIII OF 1874—*continued.*	
Section 18, clause (*e*)	Section 18 (*3*) of Bill.
19	Section 19 of Bill.
20	Sections 26 (*1*) and 36 (*1*) of Bill.
21	Section 32 of Bill.
22	Section 33 of Bill.
23	Section 34 of Bill.
24	Sections 33 (*2*) and 34 (*2*) of Bill.
25, paragraph 1...	Section 35 (*1*) of Bill.
paragraph 2...	Section 35 (*2*) of Bill.
Schedule (Forms)	Not reproduced.

S. HARVEY JAMES,

Officiating Secretary to the Government of India.

PRÉCIS OF THE OPINIONS REFERRED TO IN PARAGRAPH 1 OF THE STATEMENT OF OBJECTS AND REASONS OF THE GUARDIANS AND WARDS BILL.

In correspondence* with the Government of Bombay in the year 1881, several points were brought to notice on which an amendment of the law relating to the guardianship of the persons and property of minors in that Presidency (Act XX of 1864) was shewn to be required. Before proceeding to carry out these amendments, the Government of India issued a Resolution† inviting the opinions and suggestions of Local Governments and Administrations on the following selected points, with a view to the consolidation of the several Acts and Regulations relating to minors in force in the three Presidencies :—

I.—Whether the provision of Act XX of 1864, section 2, clause 2 (and of the Bengal Act, XL of 1858, section 3, clause 2), prohibiting any person (except in certain cases in which the Court is allowed to direct otherwise) from instituting or defending any suit connected with the estate of which he claims charge unless he has obtained a certificate of administration from the Civil Court, should not be repealed.

II.—Whether a next friend or a guardian ad litem *should (by an extension of section 461 of the Code of Civil Procedure) be allowed to execute a decree or receive money or property in the course of litigation, it being made clear that a next friend or guardian* ad litem, *who is also a guardian appointed under the Minors' Act with power to receive money on behalf of the minor, shall not be required to give security.*

III and IV.—Whether the following proposals made by the Hon'ble Mr. Justice Melvill with a view to rendering it unsafe for any person to enter into any transaction affecting immoveable property, except with a certificated administrator, should be accepted, namely :—

(a) that any alienation or incumbrance of, and any abandonment of the rights of the minor in, any immoveable property, by a guardian, should be made void, unless he holds a certificate under the Minors' Act; and

(b) that the provision in the second clause of section 18 of Acts XX of 1864 and XL of 1858, which requires the previous sanction of the Civil Court to any alienation or incumbrance of immoveable property by a certificated guardian, should be repealed.

V.—Whether, assuming it to be the intention of the legislature (see sections 464, 440 and 441 of the Code of Civil Procedure) that a guardian appointed under the Minor's Act possesses no right as such to appear on behalf of a minor, but that he must sue as next friend or be appointed to defend as guardian ad litem, *the Code of Civil Procedure should not be amended so as to make this more clear.*

VI.—Whether the first clause of section 18 of Acts XX of 1864 and XL of 1858 should not be amended so as to provide that a guardian by appointment or relationship should, when his title is declared by the Court, possess simply the same powers which he possessed before procuring a declaration of title, and that the order of the Court should have no effect except that of declaring his status; and further,

(a) whether, if the powers of a guardian who owes his status to the mere act of the Court are defined at all, they should not be defined in some way which would indicate that persons having transactions with him should bear in mind his representative character, and should not deal with him as they would if he were acting on his own account.

VII.—Whether (if clause 2 of section 18 of Acts XX of 1864 and XL of 1858 is retained) it should not be made clear that the effect of the Court's sanction to sell, alienate, &c., any immoveable property is to give the purchaser a good title to such property, in the absence of fraud or collusion on his part.

VIII.—Whether, if it should be decided to consolidate the law for the whole of British India, the new Act should not be extended to the original local jurisdiction of the Presidency High Courts; and

(b) whether the Courts in appointing guardians of property should not be given power to make appointments limited to particular property.

IX.—Whether the proposed new Act should not be confined to Hindus, Muhammadans and Buddhists, and other persons who have definite personal laws, and the European British Minors' Act, XIII of 1874, made applicable to all other classes of persons and its operation extended to the whole of British India, including the Presidency-towns, the jurisdiction of the High Courts in respect of European British Minors being abolished.

2. Local Governments and Adminstrations were also requested to submit their opinions on any other points which they might desire to bring forward for consideration in connection with the proposed legislation.

3. In the following paragraphs (4 to 210) the views of the Government of India and the remarks of Local Governments and officials on Points I to IX are noted.

I.—Whether the provision of Act XX of 1864, section 2, clause 2 (and of the Bengal Act, XL of 1858, section 3, clause 2), prohibiting any person

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* Home Department's Judicial Proceedings, Nos. 8 to 17 and 18 for August, 1881, and Nos. 167 to 172 for October, 1882.

† No. $\frac{22}{1529\text{-}1530}$, dated 17th October, 1882. (Home Department's Judicial Proceedings No. 171, for October, 1882).

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(*except in certain cases in which the Court is allowed to direct otherwise*) *from instituting or defending any suit connected with the estate of which he claims charge unless he has obtained a certificate of administration from the Civil Court, should not be repealed.*

4. This proposal was put forward by the Government of India, with reference to difficulties arising on the construction of the clause in question in connection with Chapter XXXI of the Code of Civil Procedure (*suits by and against Minors, &c.*), and also with reference to a proposal made by the Hon'ble Mr. Justice Melvill that every person who requires the assistance of the Court should be compelled to take out a certificate of administration. The reasons by which the Government of India's proposal was supported are as follow :—

"The fact that a person asserts a claim to be the guardian of a minor, whether by appointment or by relationship, seems scarcely to afford any sufficient reason for absolutely precluding him from acting as next friend or guardian *ad litem* under the provisions of the Civil Procedure Code until he has established his claim to the guardianship under the Minors' Act. If such person is actually entitled to the guardianship by virtue of appointment or relationship, it may be urged that he should certainly be allowed, in preference to any other person, to act for the limited purposes of litigation; but, on the other hand, if he is not so entitled, the circumstance of his having asserted his claim to the guardianship need not apparently be made an absolute disqualification. There are doubtless cases in which the circumstance that a person sets up an unfounded claim to the guardianship of a minor might properly be treated as unfitting him to act as next friend or guardian *ad litem*; but this point might be left to be settled by the Courts, it being understood that the decision should not in any way be made to depend on the circumstance whether the person concerned did or did not put forward a claim to guardianship in connection with the particular suit in which it was proposed that he should act."

5. MR. P. P. HUTCHINS, DISTRICT JUDGE OF MADURA (AFTERWARDS JUDGE OF THE HIGH COURT, MADRAS),—

says there is no provision in the Madras law corresponding to section 2, clause 2, of Act XX of 1864. He agrees, however, with the Government of India in thinking that the provision in the Bombay and Bengal laws might be repealed.

6. MR. C. G. PLUMER, JUDICIAL COMMISSIONER OF COORG,—

suggests that for section 2, clause 2, of Act XX of 1884 should be substituted the provision of Rule 13 of the Rules for the custody and guardianship of Minors, &c., in Mysore,* which requires that any guardian or manager appointed under the rules shall be admitted by the Courts as guardian *ad litem*.

* See *Gazette of India*, 27th April, 1872, Part I, p. 453.

7. MR. E. BARCLAY, GOVERNMENT SOLICITOR, MADRAS,—

would go further even than Mr. Justice Melvill proposed, and provide that every person should be prohibited from interfering with the estate of any minor, within a limit of value to be fixed by Government, without obtaining a certificate of administration. From this rule, however, he would except undivided shares of minors who are members of a joint Hindu family; in which cases he would provide for the Collector being *ex officio* manager unless and until a certificate is issued to some qualified private person. He suggests that the rule should embrace moveable as well as immoveable property, and he does not think it would affect so large a number of estates as the Government of India seem to anticipate (see paragraph 7 of the Resolution of 17th October, 1882).

With regard to the proposal put forward by the Government of India, Mr. Barclay writes as follows :—

"I think Chapter XXXI of the Code of Civil Procedure should be amended, and that no person should be allowed to institute a suit on behalf of a minor unless such person be manager of his estate (the Collector) or the holder of a certificate of administration. Such manager or the holder of a certificate, as he will sue in his representative character only, should not, I think, be made personally liable for costs, unless the Court finds by its decree that the suit was brought vexatiously; but provision might be made for his giving security for costs by depositing cash or Government securities belonging to the estate of the minor. With regard to suing for debts due by the estates of minors, the manager of the estate of a minor or the holder of a certificate of administration of his estate, as the case might be, could be made defendant in the same way as the executor of a will or the administrator of the estate of a deceased person is now made defendant in a suit to recover a debt due by the estate of a testator or intestate. The amendment of Chapter XXXI of the Code of Civil Procedure would apply only to such cases as might come within the provisions of the new Minors' Act."

8. MIR ANSAR-UD-DIN, PRESIDENCY MAGISTRATE, MADRAS,—

knows many cases in which persons entitled by virtue of relationship to the guardianship of a minor act as next friend or guardian *ad litem* already, and he thinks it desirable that this arrangement should, in view of difficulties arising from attending the Courts to take out a certificate, be continued.

9. MR. J. W. HANDLEY, CHIEF JUDGE OF THE MADRAS COURT OF SMALL CAUSES,—

thinks the clause in question should be repealed, because its tendency is, in all minors' suits of small value, and in all cases where minors are defendants, to cause a deadlock.

10. MR. G. MUTTUSWAMY CHETTIAR, JUDGE OF THE MADRAS COURT OF SMALL CAUSES,—

agrees with Mr. Handley.

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11. THE MADRAS BOARD OF REVENUE—
concur with the Government of India.

12. MR. JUSTICE WEST—
thinks no person wishing to sue as next friend on behalf of a minor should be subjected to any restriction other than those involved in proper rules as to costs.

13. SIR CHARLES SARGENT, CHIEF JUSTICE, BOMBAY,—
considers the clause in question should be repealed, both because it is, generally speaking, in the interest of minors that *any* person properly qualified under section 445 of the Civil Procedure Code should be allowed to act for a minor as his next friend or guardian *ad litem*, and because a certificated administrator may not fulfil the conditions prescribed by that section. He suggests, however, that the practice now prevailing in the Bombay High Court of requiring person wishing to institute a suit for a minor to obtain the consent of the Court should be adopted.

14. THE HON'BLE MR. PAUL, ADVOCATE GENERAL OF BENGAL,—
thinks the clause in question should be repealed, but that at the same time the Courts should exercise some control, and to this end suggests that the next friend should be required to obtain the sanction of the Court.

In regard to the Hindu joint family question, please see his remark in paragraph 380, *infra*.

15. MR. T. T. ALLEN, SUPERINTENDENT AND REMEMBRANCER OF LEGAL AFFAIRS, BENGAL,—
says the clause in question contains a perfectly intelligible and proper direction, which has long been acted upon with the advantage to the people; and he thinks it should be maintained in spite of the rule in the Civil Procedure Code. He argues further that the two provisions are scarcely inconsistent, inasmuch as that contained in the Minors' Act very properly requires a regular guardian to have his authority for acting sanctioned by the District Judge, while that contained in the Civil Procedure Code merely authorises any other person at his own risk and where there is no regular guardian to act in behalf of a minor; the two provisions consequently referring to two different classes of cases.

16. MR. JUSTICE FIELD, OF THE CALCUTTA HIGH COURT,—
notes that there is a very important difference between suits brought under the clause in question and suits to which Chapter XXXI of the Civil Procedure Code is applicable; namely, that in the former case the person acting ought to appear as the plaintiff or defendant *upon the record*, while in the latter the minor himself appears as plaintiff or defendant on the record. The result he describes as follows:—

"Where a decree is made against a minor, he is bound by such decree, although there has been no enquiry whether the transaction is for his benefit, except in cases of fraud, collusion or error (see Daniell's Chancery Practice, 5th Edition, pp. 148, 149, 156, 157). Where, on the other hand, the person who has obtained the certificate of administration is the plaintiff or defendant upon the record, there may be a subsequent enquiry as to whether he acted in the interests of the minor or not, and this for more than one purpose."

Mr. Field suggests that it should be made clear that a person who has obtained a certificate under the Minors' Act should sue and be sued in his own name.

17. THE JUDGES OF THE CALCUTTA HIGH COURT,—
(collectively) say Mr. Justice Melvill's proposal, that every person who requires the assistance of the Court should be compelled to take out a certificate of administration, would make it impossible for the provisions of Chapter XXXI of the Civil Procedure Code to be employed in certain cases, and they do not see any sufficient reason for adopting it.

They concur with the Government of India that there may be cases in which a person who, though entitled to claim the charge of the minor's estate, does not choose to claim it, and may yet be the fittest person to act as next friend or guardian to the minor for a particular suit; and they agree with the Government in considering that in such cases the question whether such person should be appointed next friend or guardian *ad litem* may properly be left to be decided by the Court which has the case before it, and can draw its own inferences from the conduct of the party as to his fitness for the appointment.

18. SIR ROBERT STUART, (LATE) CHIEF JUSTICE, NORTH-WESTERN PROVINCES,—
strongly objects to Mr. Justice Melvill's proposal to require certificates in all cases.

19. MR. JUSTICE OLDFIELD—
writes as follows:—

"Only guardians holding certificates should, as a rule, be permitted to institute suits or make applications on behalf of minors; but a discretion may be given to the Court to allow the next friend to appear when no certificate has been taken out. In regard to minors who are defendants, the provisions of Chapter XXXI, Civil Procedure Code, for appointing guardians *ad litem* are proper and adequate."

20. MR. JUSTICE STRAIGHT—
writes as follows:—

"There is undoubtedly much confusion caused by the concurrent existence of the second part of section 3 of the Bengal Minors' Act and the provisions of Chapter XXXI of the Civil Procedure Code, and we have more than once found considerable complication and difficulty caused thereby. I generally concur in the remarks made upon this matter in paragraph 5 of the Minute of the Government of India; and I think that, while the prohibition to suits being instituted

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without certificate might be done away with, amendments might be introduced into Chapter XXXI of the Code which would effectually protect the minor litigant's interests."

21. Mr. H. J. SPARKS, JUDICIAL COMMISSIONER OF OUDH,—

approves of the Government of India's proposal.

22. MR. B. W. COLVIN, (LATE) JUNIOR MEMBER OF THE BOARD OF REVENUE, NORTH-WESTERN PROVINCES,—

approves of Mr. Justice Melvill's proposal that every person who requires the assistance of the Court should be compelled to take out a certificate of administration. Most estates are, he says, managed without any reference to the Courts; but in all cases which do come before a Court the Court is even now obliged to satisfy itself that the person claiming to act for the minor is duly qualified to represent his interests, and it seems better that when such an enquiry is once made it should confer a general protection upon the minor, rather than one limited to the particular case before the Court. Mr. Colvin would, however, except from such a rule all properties below a certain minimum of value, arbitrarily fixed, but open to reduction as experience is gained and the people become familiar with the rule.

23. MR. W. DUTHOIT,—

sees no objection to the Government of India's proposal if his recommendations under Point II (see paragraph 57 of précis) are adopted. For his opinion of Mr. Justice Melvill's proposal, please see paragraph 291, *infra*.

24. THE LIEUTENANT-GOVERNOR AND CHIEF COMMISSIONER, NORTH-WESTERN PROVINCES AND OUDH,—

concurs with the majority of the officers consulted by him in thinking that Mr. Justice Melvill's proposal that every person who requires the assistance of the Court should be compelled to take out a certificate of administration should not be accepted, his reasons being that its adoption is not shown to be required, and that it would increase litigation.

He agrees with the Government of India in thinking that any doubts regarding the correspondence of the second clause of section 3 of Act XL of 1858 with Chapter XXXI of the Civil Procedure Code should be set at rest; but he observes that the advisability of altogether omitting that clause to some extent depends on how far, if at all, the Revenue Courts of the North-Western Provinces are bound to follow the Code of Civil Procedure where the North-Western Provinces Rent Act (Act XII of 1881) prescribes no special procedure for their observance. On this subject, he says, there has been a recent Full Bench ruling of the High Court, which he has not however yet had an opportunity of considering; and at present he can only request that the position of minors in Revenue Courts be borne in mind in any proposed legislation affecting section 3 of Act XL of 1858.

25. MR. JUSTICE SMYTH, OF THE PUNJAB CHIEF COURT,—

says applications for certificates of administration are seldom made in the Punjab; that they are usually made only when rival claimants dispute the guardianship of the person or property of a minor relative; and that such disputes appear to be few in number. He would greatly regret any change which would have the effect of increasing the number of minors' cases in the Courts. (This, apparently with reference to Mr. Justice Melvill's proposal noted in paragraph 4, *supra*.)

Numerous suits are, he says, brought in which minors are either plaintiffs or defendants, and as a rule relatives have, under the *proviso* to section 3 of Act XL of 1858, without much difficulty been allowed to sue or defend without being required to obtain a certificate of administration; "and the same practice is continued under Chapter XXXI of the new Code of Civil Procedure." If section 461 is extended, as proposed by the Government of India (see paragraph 47 of précis), Mr. Smyth thinks the second clause of section 3 of Act XL of 1858 might safely be repealed, so far as the Punjab is concerned.

26. LALLA MADAN GOPAL, PLEADER OF DELHI,—

thinks the second clause of section 3 of Act XL of 1858 should, as proposed by the Government of India, be repealed. He considers the limitation which it imposes is undesirable in the interests of minors; and, further, that it is rendered useless by Chapter XXXI of the Civil Procedure Code.

In another part of his memorandum, however, he expresses approval of Mr. Justice Melvill's proposal that every person who requires the assistance of the Court should be compelled to take out a certificate of administration, thinking it should be adopted, in the interests of the minor, in spite of any inconvenience which might result.

27. LALLA GIRDHARI LAL, PLEADER OF DELHI,—

thinks guardians should be compelled to take out a certificate of administration, excepting only in cases where the estate is of small value.

28. COLONEL C. A. MCMAHON, COMMISSIONER AND SUPERINTENDENT, AMRITSAR DIVISION,—

submits the following proposals on the subject of requiring guardians to take out certificates of administration :—

"I would leave it optional to a guardian to take out a certificate; but at the same time I would make it legal for a person indebted to a minor's estate to refuse to pay the money demanded from him to any person who had not taken out a certificate.

"I would not only retain the present power (see Mr. Justice Melvill's Minute, page 3, second paragraph on the page) of a minor to sue or defend a suit through his next friend or guardian,

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in cases in which the next friend or guardian does not profess to claim the charge of the property; but I would extend this liberty to all cases, whether the next friend or guardian claims charge of the property or not, giving the opposite party, however, the right in cases in which the minor's next friend or guardian claims the charge of the property to require the latter to take out a certificate of administration in separate proceedings. The law might provide for the suit being stayed or postponed for a sufficient time to enable this step to be taken."

He continues:—

"In cases in which a man's position as guardian, whether by reason of a provision in a will or by near relationship, is clear, I do not think it is desirable otherwise than as above provided to force the guardian to take out a certificate. As pointed out in the papers under reference, the taking out of a certificate is apt to foster undesirable litigation, and in the great majority of cases the necessity for taking out a certificate would not arise unless the necessity were artificially created by legislation."

29. MUHAMMAD LATIF, EXTRA ASSISTANT COMMISSIONER OF JHANG,—

thinks the clause in question might safely be repealed, because it has been practically superseded by the beneficial rules enacted in Chapter XXXI of the Civil Procedure Code. If this is done, he suggests the insertion in the Code of a clause empowering the Court to accept as next friend or guardian *ad litem* any administrator certificated under the Minors' Act (apparently, in preference to any other person.)

30. UMAR BAKHSH, PLEADER, OF MULTAN,—

thinks the clause in question should be repealed, and that the Civil Procedure Code should be amended so as to provide that where a guardian has been appointed by a Civil Court (? certificated) he shall, in preference to others, be appointed next friend or guardian *ad litem*.

31. COLONEL E. P. GURDON, COMMISSIONER AND SUPERINTENDENT, MULTAN DIVISION,—

thinks the clause should be repealed, both in view of the provisions of Chapter XXXI of the Civil Procedure Code, and having regard to the fact that the proviso admits of wide and varied departures from the strict rule which the clause enacts. If the clause is repealed, he suggests that a clause should be inserted in the Civil Procedure Code legalizing the acceptance by the Civil Court of a certificated administrator as next friend or guardian *ad litem* wherever there is one.

32. MR. H. T. RIVAZ, GOVERNMENT ADVOCATE, PANJAB,—

thinks the clause should be repealed and Chapter XXXI of the Civil Procedure Code amended so as to deal exhaustively with its subject-matter. He continues:—"I think it might be made clear that, where there is a guardian holding a certificate, the Court should accept such guardian as the person *primâ facie* entitled to represent the minor plaintiff or defendant, and that the claims of such guardian should only be postpond on proof of incapacity or unfitness. The chapter might then go on to lay down the procedure which is to govern cases where no certificated guardian has been appointed, with regard to which full provision is already made in Chapter XXXI as it at present stands, though I think it might be made more clear as to what is the exact effect of any omission of the Court to carry out the provisions of the chapter in their integrity. Several cases have occurred lately in this province in which a minor plaintiff or defendant has been represented throughout in the Lower Courts by an apparently competent representative, but where such representative appears to have been accepted by the Court without any enquiry or any formal proceeding under Chapter XXXI of the Code. In many of these cases the Chief Court, when the facts have been brought to its notice, has felt bound to cancel the whole of the proceedings and order a re-trial after proper steps have been taken by the Lower Court under Chapter XXXI; thus in some cases rendering void *ab initio* proceedings which have really been conducted throughout with due regard to the minor's interests, and in which the defects in the appointment of his representative are merely formal. I think, therefore, Chapter XXXI might attempt to point out what defects in the procedure prescribed must be considered fatal to the validity of the proceedings, and what may be considered mere irregularities not necessarily rendering the proceedings void, if no substantial injury to the interest of the minor can be shown to have resulted."

33. THE LIEUTENANT-GOVERNOR OF THE PUNJAB—

thinks it doubtful whether any amendment of the Civil Procedure Code is really required on the score of its conflict with Act XL of 1858, section 3, clause 2; and says that, so far as the Punjab is concerned, no practical difficulty seems likely to arise from the maintenance of both provisions of law.

34. SARDAR GURDIAL SINGH, EXTRA ASSISTANT COMMISSIONER,—

thinks the clause should be removed, and a provision inserted in its place to the effect that where a guardian has been appointed under the Minors' Act no one else shall be allowed to act for the minor.

35. MR. R. J. CROSTHWAITE, JUDICIAL COMMISSIONER, CENTRAL PROVINCES,—

argues that clause 2 of section 3 of Act XL of 1858 and Chapter XXXI of the Civil Procedure Code are not in conflict, inasmuch as the Courts, being allowed a discretion under the latter enactment, would exercise it so as to secure the appointment of a certificated administrator, who has a legal right to represent the minor, where there is one and he is willing to act.

Where, however, the certificated administrator is not willing to act, the proviso to section 3 of Act XL of 1858 lets in another person, and the omis-

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sion from the corresponding clause of Act XX of 1864 of the words "or for any other sufficient reason" is therefore undoubtedly an error.

He thinks clause 2 of section 3 of Act XL of 1858 might be repealed as proposed by the Government of India; but he would prefer to let it stand and to bring the corresponding clause of Act XX of 1864 into complete accord with it. If the clause is repealed, he says, suits might be brought by next friends merely for the purpose of substantiating a claim to the charge of a minor's estate.

Referring to Mr. Justice Melvill's proposal (*supra*, paragraph 4), he considers it should not be adopted, because it would greatly increase litigation and would put difficulties in the way of realising petty sums due by minors.

36. MR. BEHARI LAL BASU, PLEADER, OF HOSHANGABAD,—

writes:—

"In the Bombay Act it is incumbent on the creditor to take out a certificate before he can proceed against a minor, the claim exceeding Rs. 250; thus it entails great hardship on the creditor, who is bound to take some preliminary steps for the assertion of his claim, thereby incurring trouble and expense.

"But this section in the Minors' Act does not seem called for, as it is a matter of procedure, and any change which is conducive to the welfare of the minor can be introduced in the Procedure Code. Any guardian who has obtained a certificate under the Minors' Act should not be required to appear as next friend in civil cases. Chapter XXXI of the Civil Procedure Code should not be made applicable to a certificated guardian."

37. MR. J. W. CHISHOLM, OFFICIATING COMMISSIONER, NARBADA DIVISION,—

observes that the tendency of Mr. Justice Melvill's proposals mentioned in paragraphs 3 and 6 of the Resolution (Points I, III, and IV) is to make applications to the Courts for certificates of administration as numerous as possible. He is opposed to this policy for the following reasons:—

Certificates are at present rarely applied for, and to make them compulsory would be undesirable and would certainly be distasteful to the people. Nor would such a provision do much to protect the interests of minors, because these are as a rule well looked after by the immediate relations or natural guardians, and where loss occurs it results (in the Central Provinces) not from wrongful assumption of guardianship but from abuse of powers by rightful guardians, and it is not possible to follow up the grant of a certificate by controlling the proceedings of the guardian. The proceedings antecedent to the grant of a certificate would, moreover, cause much inconvenience and expense, which would not be compensated by any benefit to the estate of the minor; and another consequence of introducing such a procedure would be that, to avoid trouble, near relations of minors would continue to act without certificates, with the result that many of the transactions entered into by them would, if challenged, be declared void, and this would lead to much dishonest litigation.

For these reasons, Mr. Chisholm would prefer that the application for a certificate should continue to be optional, as provided in section 2 (? section 3) of Act XL of 1858. He would omit the latter clauses of that section as being separately provided for in Chapter XXXI of the Civil Procedure Code, and would clearly provide in that chapter for certificated guardians being allowed to appear in all cases in the Civil Courts on account of the minors whom they represent.

38. LIEUTENANT-COLONEL C. H. GRACE, DEPUTY COMMISSIONER, JABALPUR,—

approves of the Government of India's proposal, but suggests that the Court, in appointing a guardian [*? ad litem*] in "doubtful cases," should see that he is fit for the trust, that he has no interest adverse to that of the minor, and that he is a relation or kinsman of the minor.

39. THE CHIEF COMMISSIONER OF THE CENTRAL PROVINCES—

considers Mr. Justice Melvill's proposal that every person who requires the assistance of the Court should be compelled to take out a certificate of administration is both unnecessary and impolitic. The experience of the Central Provinces is that it is not the usurpation of the office of guardian, but the abuse of its powers, that is the source of litigation; and the Chief Commissioner believes that the proposed provision would lead to inconvenience and increased litigation.

Referring to Mr. Crosthwaite's remarks [*supra*, paragraph 35] as to the supposed conflict between the provisions of the Minors' Act and those of Chapter XXXI of the Civil Procedure Code, the Chief Commissioner suggests that it would be well to get rid of any uncertainty on the subject by making it clear that, if the Court allows it, a person otherwise qualified to act may sue on behalf of a minor, even though he has not obtained a certificate.

40. THE RECORDER OF RANGOON—

discusses the relative bearing of section 3, clause 2, of Act XL of 1858, and Chapter XXXI of the Civil Procedure Code, and arrives at the following conclusions:—

"It would seem therefore that, so far as the institution and defence of suits is concerned, if any person obtains a certificate of administration under Act XL of 1858, such person, and such person only, could institute or defend a suit connected with the estate; creditors could deal with him and he could deal with debtors. No alteration of the law has been made in such a case by the passing of Chapter XXXI, except to make the guardian sue as next friend and to make him in some instances liable for the costs of a suit.

But in cases where no person obtains a certificate under Act XL of 1858, or gets leave to sue without a certificate under its provisions, in such cases the passing of Chapter XXXI has made a great difference, for it enables any person who does

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not claim the charge of the minor's estate without applying for a certificate of administration to institute suits on his behalf as next friend, and any person to institute suits against his estate by getting a guardian for the suit appointed, and no person need claim the charge of the minor's estate unless he pleases.

"It seems to me to come to this, that the passing of Chapter XXXI of the Code of Civil Procedure enabled the estate of a minor to be got in and distributed without any certificate of administration being applied for under Act XL of 1858, unless on the application of some person interested in the minor that Act was put into force, in which case, if the application was granted, the estate would be administered under the provisions of the old Act, whereas before the Chapter XXXI became law the estate of a minor could not be got in or distributed without putting the provisions of Act XL of 1858 in force if any question had to be litigated.

"The Government of India appears to think that the effect of passing Chapter XXXI of the Code has been to make it applicable to a certain extent to persons who have obtained certificates under Act XL of 1858, and no doubt to a very limited extent it is, as under it the next friend, who would be the certificate-holder, may be ordered to pay costs personally; but I cannot see, as would seem to be implied by the 9th paragraph of the Resolution of the Government of India, that Chapter XXXI would so far apply to a certificate-holder as to render it necessary for him to be appointed a guardian *ad litem* under it: it seems to me that he has the position of guardian *ad litem* without it."

He does not approve of Mr. Justice Melvill's proposal (see paragraph 4, *supra*), regarding which he writes as follows:—

"It seems to me that it would not be for the benefit of minors or of persons who had claims against their estates that no person should be able to sue on their behalf, and no person should be able to sue them, without first getting out certificates of administration; and it seems to me that any danger which would attend dealing with the estates of minors by uncertificated persons is sufficiently guarded against by the fact that any person may come to the Court under section 4 of Act XL of 1858 and apply that a person may be appointed to guard the interests of the infant; and if the Court choose to grant the application and appoint a guardian, I take it that the power of the uncertificated person would at once cease, and that, if the litigation entered on by him was improper, he could be punished by being made to pay the costs."

Nor does he think the proposal of the Government of India, to repeal the second clause of section 3 of Act XL of 1858, should be carried out. Regarding this he writes:—

"If that alteration is made, it seems to me that a safeguard which the law now provides for minors would become less effectual. Suppose a debtor to the estate of a minor forces a person interested in the minor to go to Court: if that person does not claim the charge of the minor's property, Act XL of 1858 does not stand in his way; he sues under Chapter XXXI of the Civil Procedure Code, and any benefit which may accrue from the suit would be secured to the minor. If the proposed alteration in the Civil Procedure Code is made, namely, that no next friend should be allowed to take any benefit on behalf of the minor unless he satisfies the Court that it will be applied for the benefit of the minor, the debtor thus secures the proper guarding of the rights of the minor. Again, if the person who makes the claim on behalf of the minor is also claiming the right to have charge of the property of the minor, the debtor can, and it seems to me rightly can, prevent him taking advantage of Chapter XXXI of the Code and compel him to take out an administration certificate, thus again securing the rights of the minor; but if the alteration suggested by the Government were made the debtor could not compel him to take out a certificate, and a proviso making him give security that any benefit accruing from the litigation should be applied on behalf of the minor is not nearly so effectual when taken from a person who claims a right to have charge of a minor's property as when taken from a person who claims no such right, but, without being interested in the minor's property, has merely asked the assistance of the Court to get him his rights.

"Again, take the case of a suit brought against a minor. If no person claims the right to have charge of the property, the creditor very rightly comes in under Chapter XXXI and secures his rights, and the rights of the minor are adequately represented by a guardian *ad litem*; but if any person does claim the right to have charge of the property of the minor, I do not think the rights of the minor are adequately secured by appointing such person guardian *ad litem*; it could not be done under the present state of the law; he would have to take out a certificate; but if the law was altered as suggested by the Government, it might be done and, as it seems to me, the rights of the minor be thereby prejudiced.

"I do not quite see that the alteration suggested by the Government is necessary to enable the person who thinks he has a right to take charge of the property of a minor to come in under Chapter XXXI; if no one challenges him he will make no claim to have the charge of the minor's estate, and he will act under Chapter XXXI; but if any one challenges him, it will no doubt have the effect, as the law now stands, of compelling him to take out a certificate.

"Another point of view which I submit may be worthy of consideration is the change which the alteration of law proposed by Government would have in cases where the person who claims the right to have charge of the minor's property wished to deal with it himself alone. At present he must establish to the satisfaction of the Court his right to so deal with it and that it will be

Précis of the Opinions referred to in paragraph 1 of the Statement of Objects and Reasons of the Guardians and Wards Bill.

(Point I.—Appearance of guardian in Court without certificate of administration.)

(Point II.—Execution of decrees, &c., by next friends and guardians ad litem.*)*

dealt with for the benefit of the minor. Once he has done that no person other than he can represent the minor as a party in a suit, and no decrees could be got against the estate of the minor without making him a party. If the alteration suggested by the Government were carried out, and a person who claimed the right to have charge of the property of a minor was not bound to take out a certificate in order to be made a defendant in a suit against the minor, might not a fraud be committed by a person claiming the right to the property of a minor getting appointed a guardian *ad litem* and suffering a decree to be executed against the property of the minor? Such a case could not happen if the Government alteration is not carried out, because such a person would have to take out a certificate before being made a defendant."

41. THE JUDICIAL COMMISSIONER OF BRITISH BURMA—

considers that the clause in the Minors' Acts should be repealed, and the Courts allowed full discretion under the Civil Procedure Code. He observes that the interests of guardians appointed under the Minors' Acts may often, in special cases, be opposed to those of the minors.

42. THE CHIEF COMMISSIONER OF BRITISH BURMA—

invites attention to the remarks of the Recorder of Rangoon (*supra*, paragraph 40) regarding the construction of section 3, clause 2, of Act XL of 1858 and Chapter XXXI of the Civil Procedure Code, and suggests that the law should be so expressed as to convey the meaning there assigned to it.

He agrees that Mr. Justice Melvill's proposal (see paragraph 4, *supra*) should not be adopted; but he observes that, for the reasons given by the Recorder (see paragraph 40, *supra*), it appears desirable to maintain the second clause of section 3 of Act XL of 1858.

43. MR. J. KNOX WIGHT, DEPUTY COMMISSIONER OF CACHAR,—

says the repeal of the second clause of section 3 of Act XL of 1858 would doubtless in some ways be a great boon to intending minor suitors, but that the ultimate effect would be that self-constituted guardians would seldom or never apply for a certificate of administration, except in cases where there is a dispute among rival guardians. He considers it desirable in the interests of minors that certificates should be taken out, and he is therefore opposed to the proposed repeal. To remedy the anomaly pointed out in paragraph 5 of the Resolution, he would compel all guardians by virtue of relationship to take out a certificate before suing on behalf of minors.

44. Mr. H. MUSPRATT, DISTRICT JUDGE OF SYLHET,—

considers the adoption of Mr. Justice Melvill's proposal (*supra*, paragraph 4) would cause great inconvenience.

45. BABU KOYLAS CHUNDER GHOSE, GOVERNMENT PLEADER, SYLHET,

makes some remarks bearing on the conflict between clause 2 of section 3 of Act XL of 1858 and Chapter XXXI of the Civil Procedure Code.

46. THE RESIDENT AT HYDERABAD—

agrees in the remarks in paragraph 5 of the Resolution, as to the conflict between clause 2 of section 2 of Act XX of 1864 and Chapter XXXI of the Civil Procedure Code. But he suggests that instead of repealing that clause it should be amended so as to run as follows :—

"No person shall be entitled to institute or defend any suit connected with the estate of a minor unless and until he shall have obtained from the Civil Court a certificate of administration in respect of such estate :

"Provided that in cases when no such certificate has been granted, any Court having jurisdiction may, when the property in litigation is moveable property, or when the value of the property in litigation does not exceed Rs. 500, allow any relative of a minor to institute or defend a suit in his behalf."

He "does not anticipate that the number of guardians by relationship who would have to take up certificates [under such a provision] would be materially larger than at present, except in the case of uncontested applications. In these there would probably be an increase, and attendance at Court would create a certain amount of hardship, which would, however, be minimized by a judicious resort to the proviso in section 5, Bombay Minors' Act." "It would," he says, "further be necessary to extend the provisions of section 464, Civil Procedure Code, by substituting 'section 440' for 'section 442.'"

Point II.—Execution of decrees, &c. by next friends and guardians ad litem.

II.—Whether a next friend or a guardian ad litem *should (by an extension of section 461 of the Code of Civil Procedure) be allowed to execute a decree or receive money or property in the course of litigation it being made clear that a next friend or guardian* ad litem, *who is also a guardian appointed under the Minors' Act with power to receive money on behalf of the minor, shall not be required to give security.*

48. MR. S. SUBRAMANIYA IYER, HIGH COURT VAKIL, MADRAS,—

is strongly of opinion that neither guardians nor next friends should be allowed to take money out of Court on behalf of a minor, whether before or after decree, without giving security.

49. MR. PLUMER—

would add to the clause which he proposes should take the place of clause 2 of section 2 of Act XX of 1864 [see paragraph 6 of précis] a proviso to the effect that no guardian *ad litem* who has not obtained a certificate from from the Court shall be allowed to receive or take any money or other property due to the minor under a decree in any suit in which he has acted as guardian on behalf of the minor unless he has first obtained leave of the Court which passed the decree, &c., and gives

Précis of the Opinions referred to in paragraph 1 of the Statement of Objects and Reasons of the Guardians and Wards Bill.

(*Point II.—Execution of decrees, &c., by next friends and guardians* ad litem.)

satisfactory security that such money or other property shall be applied to the benefit and use of the minor.

50. MR. BARCLAY—

says that if his suggestion [see paragraph 7 of précis] that the right to sue for and to defend minors or their estates be given only to the managers of their estates (the Collectors) and the holders of certificates of administration, section 461 of the Code of Civil Procedure would, in cases coming within the provisions of the new Minors' Act, be unnecessary.

52. THE MADRAS BOARD OF REVENUE—

concur with the Government of India.

52. SIR CHARLES TURNER, (LATE) CHIEF JUSTICE OF MADRAS,—

suggests, in connection with section 461 of the Civil Procedure Code, that every Court obtaining control over property, of which there is no trustee, belonging to a minor for whom no guardian of the property has been appointed, should be required to give such directions as, having regard to the nature of the property, may sufficiently protect it from waste and secure its proper application.

A rule of this kind is, he says, already followed in the Madras High Court.

53. MR. JUSTICE WEST—

thinks the Court should have a discretion as to who may receive money or other property won for a minor by a next friend.

He further suggests specific provision being made that an administrator duly appointed should have power to receive and pay money for the minor under decrees, and also power to settle disputes in actual litigation or likely to lead to litigation; also that a proviso might be added affirming the general principle of the voidableness as against the minor of fraudulent and collusive transactions imputable to the person benefiting by them.

54. SIR CHARLES SARGENT AND MR. JUSTICE MELVILL—

approve of the Government of India's proposal.

55. MR. JUSTICE FIELD—

writes as follows—

"Section 461 sufficiently provides for the interests of the minor in respect of money or other things received or taken by the next friend or guardian *ad litem* in those suits to which the chapter of the Code of Civil Procedure applies. In suits brought by a certificated manager, he would have the same control over the money or property of the minor which he would exercise in matters unconnected with litigation, and the proper discharge of his duty should here be secured, as I have already pointed out (see paragraph 362 of précis), by requiring him to give security commensurate with the value of the property entrusted to his management. This is the rule in the case of receivers, mercantile agents and other persons discharging fiduciary duties. The same rule should be made applicable to persons discharging similar duties in respect of a minor's estate."

56. THE JUDGES OF THE CALCUTTA HIGH COURT—

(collectively) see no objection to the adoption of the Government of India's proposal; but they would require the next friend or guardian *ad litem* to give adequate security (in all cases, apparently).

57. MR. DUTHOIT—

supports the following proposals made by Messrs. Melvill and West (*JJ.*):—

By Mr. Justice Melvill.—Execution of a decree in favour of a minor should not be granted to a "next friend" or a "guardian for the suit" until such person takes out a certificate entitling him to the care of the minor's estate.

By Mr. Justice West.—When a decree is obtained in favour of a minor by a next friend, the next friend should be allowed to execute the decree either on terms of giving security, or leaving the money to be dealt with by the Court, or on terms of taking out a certificate of administration; but a certificated administrator should in all cases be entitled to obtain execution of a decree obtained in favour of a minor by a next friend.

He says he can see no objection to the first of these proposals, which "corresponds somewhat with the provision of the Roman law contained in the early part of *Dig. IV.*, 4, 7, § 2;" but he would "prefer to read into Mr. Justice Melvill's proposals that of Mr. Justice West, which closely corresponds with the later provision of the Roman law contained in the latter part of the same passage of the *Digest*." He adds "If the money is paid into Court, I would advocate a provision in the law allowing the Court to invest it in Government stock or promissory notes."

Mr. Duthoit prefers such a provision to that suggested by the Government of India.

58. MR. H. J. SPARKS AND THE LIEUTENANT-GOVERNOR AND CHIEF COMMISSIONER, NORTH-WESTERN PROVINCES AND OUDH,—

approve of the Government of India's proposal.

59. LALLA MADAN GOPAL—

suggests that it should be provided in section 461 of the Civil Procedure Code that "an application for execution of decree may be made by the next friend of a minor decree-holder, but he is not to take out the money without giving security."

60. COLONEL C. A. MCMAHON—

writes as follows:—

"I would repeal section 461 of the Civil Procedure Code. If the person who has to pay the money does not see the necessity, for his own protection, of forcing the guardian or next friend to take out a certificate, as provided for in my paragraph 4 [see paragraph 28 of précis], I do not see that the Civil Court need trouble itself about the matter."

61. MUHAMMAD LATIF—

suggests that the only change required in the law is the addition of a clause to section 461 of the Civil Procedure Code empowering a next friend or guardian *ad litem* to receive property in execution of a decree.

Précis of the Opinions referred to in paragraph 1 of the Statement of Objects and Reasons of the Guardians and Wards Bill.

(Point III.—Voidance of alienations, &c., made by uncertificated Guardians.)

(Point IV.—Whether Court's sanction should be required to alienations.)

He also suggests that the provision in that section regarding security is unnecessary and should be removed altogether.

62. UMAR BAKHSH—
thinks a certificated guardian should have a right to execute a decree obtained either by himself or by any other person who has acted as next friend before his own appointment. He also thinks certificated guardians should not be required to give security, but that other persons should be so required, the Court, however, having a discretion to dispense with security in the case of near relatives acting as guardians.

He further suggests that it should be left optional with guardians desiring to execute a decree either to give security or to take out a certificate of administration.

63. COLONEL GURDON—
agrees with Muhammad Latif (paragraph 61, *supra*) that no security should be required from any guardian under section 461 of the Civil Procedure Code, adding that the provision is unnecessary if the Courts work section 443 properly.

64. SARDAR GURDIAL SINGH—
thinks no one should be allowed to receive money on behalf of a minor in execution of a decree unless he either holds a certificate of guardianship or tenders sufficient security.

65. MR. R. J. CROSTHWAITE—
says the proposed amendment of section 461 of the Civil Procedure Code would be an unquestionable gain.

66. LIEUTENANT-COLONEL GRACE—
approves of the Government of India's proposal.

67. THE JUDICIAL COMMISSIONER OF BRITISH BURMA—
approves of the proposed amendment of section 461 of the Civil Procedure Code, except that he would not fetter the discretion of the Courts as to taking security.

68. THE CHIEF COMMISSIONER OF BRITISH BURMA—
approves of the Government of India's proposal.

69. MR. H. MUSPRATT—
concurs in the proposed extension of section 461 of the Civil Procedure Code, but would not except the rule as to security.

[See also remarks by—
the Recorder of Rangoon, in paragraph 40 of précis; and
Mr. Wigram, in paragraph 370 of précis.]

Point III.—Voidance of alienations, &c., made by uncertificated guardians.
Point IV.—Whether Court's sanction should be required to alienations.

III and IV.—Whether the following proposals made by the Hon'ble Mr. Justice Melvill with a view to rendering it unsafe for any person to enter into any transaction affecting immoveable property except with a certificated administrator, should be accepted, namely:—

(a) that any alienation or incumbrance of, and any abandonment of the rights of the minor in any immoveable property, by a guardian should be made void, unless he holds a certificate under the Minors' Act; and

(b) that the provision in the second clause of section 18 of Acts XX of 1864 and XL of 1858, which requires the previous sanction of the Civil Court to any alienation or incumbrance of immoveable property by a certificated guardian, should be repealed.

70. In regard to proposal (*a*), the Government of India pointed out that it would require very careful consideration with reference to the facts, peculiar to India, (1) that the number of minors owning immoveable property without the intervention of trustees is very large, and (2) that cases constantly arise in which it is necessary to deal with the immoveable property of minors by way of sale, mortgage, &c. These two facts would, if the proposal were adopted, necessitate a very large number of guardians by relationship taking out certificates, and this would entail much trouble on the people in attending the Courts, and would also tend, by reason of the business being made a Court matter, to foster acrimonious disputes. "Further, it may be observed that the Government does not possess any definite knowledge as to the supposed evils of the existing system, beyond the fact that a considerable amount of litigation arises regarding transactions effected by guardians; but whether this amount of litigation is large, considering the number of the transactions, may be open to doubt. In connection with this point, a further question presents itself, *viz.* whether litigation of the kind under consideration usually arises from persons wrongfully usurping the position of guardian or from the rightful guardians abusing their powers. If the latter is the true cause, the plan suggested by Mr. Justice Melvill would scarcely afford a remedy, inasmuch as the guardian, after he had been granted the certificate, would, under the second of the two proposals embraced in that plan, be left to act without the sanction of the Court. On the other hand, if Mr. Justice Melvill's first proposal were adopted without his second, it may perhaps be anticipated that the number of cases coming before the Courts under the second clause of section 18 of Act XX of 1864, and the corresponding provision of the Act of 1858, would be so great as to render it doubtful whether it would not be beyond the power of the Courts to deal with them with that degree of care which is essential in such matters."

71. MR. HUTCHINS—
is opposed to the adoption of proposal (*a*). He thinks the law as it stands already mades it "unsafe to enter into any transaction affecting a minor's immoveable property," and says it is only fair to the minor that persons buying such property should have to satisfy themselves that the transaction is an equitable one. This safeguard would be removed if guardians were certificated, since the certificate would tend to inspire confidence in the mind of the purchaser as to the guardian having absolute power to deal with the property; and that would be an undesirable result,

Point III.—Voidance of alienations, &c., made by uncertificated guardians.

Précis of the Opinions referred to in paragraph 1 of the Statement of Objects and Reasons of the Guardians and Wards Bill.

(Point III.—Voidance of alienations, &c., made by uncertificated Guardians.)

Mr. Hutchins' experience showing that litigation in these cases generally arises from the rightful guardian, who can easily obtain a certificate, abusing his powers.

Mr. Hutchins would except from his remarks the case of undivided families, "and perhaps even of some other joint proprietors."

72. MR. S. SUBRAMANIYA IYER, HIGH COURT VAKIL, MADRAS,—
thinks it would be unwise to give guardians any absolute authority to bind minors by alienations of their estates.

73. MR. PLUMER—
strongly protests against the adoption of proposal (*a*), for the reasons given in paragraph 7 of the Government of India's Resolution. He thinks there can be little doubt that litigation arises principally, if not entirely, from abuse of powers by rightful guardians, and that the proposal is therefore rendered useless by proposal (*b*), independently of the other objections to it.

He says with Mr. Hutchins (see paragraph 71, *supra*) that much keenness is displayed under existing circumstances by purchasers of minors' property, in ascertaining that the transaction is an equitable one and therefore ultimately binding on the minor.

74. MR. W. WILSON, DIRECTOR OF REVENUE SETTLEMENT AND AGRICULTURE, MADRAS,—
does not think either proposal (*a*) or (*b*) should be adopted, remarking that, although they may be in the interest of the guardian and the alienee, he cannot see how they can be regarded as being in the interest of the minor, for whose protection the law is intended.

75. MR. E. BARCLAY, GOVERNMENT SOLICITOR, MADRAS,—
approves of proposal (*a*), as being in accordance with his suggestion (see paragraph 7 of précis) that no one but the manager or certificated administrator should have power to deal with a minor's estate.

76. THE MADRAS BOARD OF REVENUE—
concur in the Government of India's remarks.

77. SIR CHARLES TURNER—
writes:—

"For reasons which are fully stated in the Resolution of the Government of India, it does not appear expedient to prohibit guardians from dealing with the immoveable property of minors unless they have obtained a certificate.

"In no country is the compulsory recourse to Courts more distasteful to the people, and in no country is property in land more minutely subdivided or interests in it more largely held by minors. The Mitakshara, which makes every son on his birth a co-owner with his father, obtains throughout this Presidency, except in Malabar and South Canara, and in those countries, in many Brahmin families and under the tarwad systems of Malabar and South Canara, minors on their birth become co-owners of the tarwad estates."

78. MR. JUSTICE MELVILL—
suggests that, to meet the Government of India's objections to his proposal (*a*), cases in which the minor's property does not exceed Rs. 500 should be excepted. With this limitation, and with the exclusion of managers of joint Hindu families (as to whom, see paragraph 379 of précis), the inconvenience to the public and the labour entailed upon the Courts would, he says, probably not be great, especially if the District Court were authorised to form its decision upon evidence taken by a Subordinate Court at no great distance from the residence of the parties. With these limitations, Mr. Melvill still thinks that it is desirable that every person who assumes a right to take charge of the property of a minor should be required to submit himself to an examination of his fitness; and that, when his fitness has been once ascertained and certified by the Court, he should then be left free to deal with the minor's property without further interference, but subject to the right of the minor to impeach, when he attains his majority, any alienations made by the administrator. * * The Court has good opportunities for ascertaining the general fitness of an administrator, but it has not the means of satisfying itself as to the advisability of any proposed alienation. It is very liable to be misled by a fraudulent administrator, and it might be very hard upon the minor if a sanction obtained from an imperfectly informed authority were to render the alienation unimpeachable.

"But the case is different when the administrator is the Collector or an officer of the Court. Here, at all events, the Court will not be wilfully misled, and it will have all the information which the administrator can afford. It might be advisable to provide for a proclamation or advertisement inviting persons to come forward who might have any objection to a proposed alienation. With these precautions, I think that the sanction of the Court to alienations might properly be given, and that transactions so sanctioned should not afterwards be liable to be impeached."

79. MR. T. T. ALLEN—
dissents from proposal (*a*). He says "it would cause great inconvenience to refuse powers of alienation to any but certificated guardians, and to deny them rights which their several systems of personal law give them. It would also inundate the Judge's Court with work of a trivial character."

80. THE JUDGES OF THE CALCUTTA HIGH COURT—
concur generally in the views expressed in paragraph 7 of the Government of India's Resolution. They cannot support Mr. Justice Melvill's proposal (*a*), thinking no sufficient cause is shown for adopting it, and that it would cause great hardship, and explaining particularly that it would involve a serious change in the Hindu law, under which alienations by the manager continually take place during the minority of some member of the family, although he holds no certificate of administration.

Précis of the Opinions referred to in paragraph 1 of the Statement of Objects and Reasons of the Guardians and Wards Bill.

(Point III.—Voidance of alienations, &c., made by uncertificated Guardians.)

81. MR. JUSTICE OLDFIELD—
disapproves of Mr. Justice Melvill's proposal (*a*). He writes :—

"The objections to any such enactment, which are fully set out in the Resolution, appear to me conclusive. Such evils as exist are due not so much to persons usurping wrongfully the office of guardians, as to abuse of their powers by rightful guardians, and are nothing in comparison to those which would issue from insisting on certificates of administration being taken out : not only would the general inconvenience be great, but the interests of the minor would probably be neglected in numerous instances."

82. MR. JUSTICE STRAIGHT—
thinks the adoption of Mr. Justice Melvill's proposal (*a*) would not be satisfactory, and would certainly, in the North-Western Provinces, cause enormous inconvenience.

83. MR. B. W. COLVIN—
approves of Mr. Justice Melvill's proposal (*a*), provided estates of small value are excepted.

84. MR. DUTHOIT—
says, with reference to the Government of India's remarks in paragraph 7 of the Resolution, (1) that he sees no reason to apprehend that the Courts would be swamped with minors-protection business ; (2ndly) that in most districts of the North-Western Provinces and Oudh the subordinate Civil Courts are so distributed that, if the proposals which he has made elsewhere [see paragraph 291 of précis] should be approved, no appreciable hardship from having to attend Court need be caused to the people ; and (3rdly) that he sees no reason to suppose that minors-protection business would, in the North-Western Provinces and Oudh, be in any large measure contentious.

It will be seen from paragraph 291 of this précis that Mr. Duthoit is inclined to support Mr. Justice Melvill's proposal (*a*). He suggests, however, that if it is adopted it should (besides being amended as there suggested) carry a proviso that it shall not apply to the case of a Hindu minor who is a member of an undivided family, wherein is an adult member capable of managing the family property.

85. THE LIEUTENANT-GOVERNOR AND CHIEF COMMISSIONER, NORTH-WESTERN PROVINCES AND OUDH,—
invites attention to the opinions expressed by Messrs. Oldfield and Straight, *J J.* [paragraphs 81 and 82, *supra*]. He writes : "If this proposal were adopted, it might result that the number of guardians who would be obliged to take out certificates would be so large that the Courts might fail to deal effectively with the numerous cases that would come before them ; or that the trouble and annoyance of having to take out certificates would deter many persons from undertaking the office of guardian, whereby the interests of minors would suffer. The inconveniences pointed out in parapraph 7 of the Resolution would undoubtedly follow the adoption of the proposal ; and the facts stated by Mr. Duthoit [see paragraph 291 *infra*] and also by Mr. Justice Oldfield [see paragraph 81, *supra*] show that the proposal would fail to secure its object, since the litigation which arises on this subject is chiefly caused, not by persons wrongfully usurping the position of guardian, but by rightful guardians abusing their powers."

86. MR. JUSTICE SMYTH—
says suits in which minors after attaining their majority contest alienations made during their minority by their guardians are not numerous in the Punjab, and that his experience is that persons acting as guardians, whether they are the rightful guardians or not, do not often abuse their powers, but usually try to do what they think best for the minor. He adds that his impression is that it is the person who is rash enough to take a conveyance from the guardian rather than from the minor himself who suffers most under the present system, and observes that in such cases the remedy lies in the alienee's own hands.

He considers that, for the reasons stated in paragraph 7 of the Resolution, it would be very unwise to adopt Mr. Justice Melvill's proposals (*a*) in the Punjab, "where, on the whole, the people get on very well without having recourse to certificates."

87. MUHAMMAD LATIF—
is strongly opposed to Mr. Justice Melv ill's proposal (*a*), on the grounds that it is unnecessary that the ignorance of the people would prevent their getting news of so serious a change having been made, and that it would increase litigation and unnecessarily impede the administration of justice. He adds that the ordinary law sufficiently provides for calling guardians to account for maladministration of a minor's estate.

88. UMAR BAKHSH—
thinks the drawbacks attending proposal (*a*), resulting from requiring a large number of people to have recourse to the courts, outweigh any advantages which it may possess.

Further on, however, he suggests that alienations by certificated guardians who are not relatives of the minor, in favour of persons with whom they have personal dealings, should be made unsafe, if not declared altogether void. Cases have come to his knowledge in which guardians have indirectly derived personal benefit from such transactions, and it is, he says, very hard in such cases to prove actual fraud.

89. COLONEL E. P. GURDON—
is strongly opposed to proposal (*a*), and agrees with Muhammad Latif [paragraph 87, *supra*) that the Hindu and Muhammadan laws sufficiently guard the interests of minors in the matter in question.

90. MR. H. T. RIVAZ—
thinks proposal (*a*) would work great injustice in the Punjab, "in many parts of which the people still remain persistently ignorant of all enactments which conflict with their usual practices, and where no evils are apparent as the result of the existing system. Cases no doubt occasional-

Précis of the Opinions referred to in paragraph 1 of the Statement of Objects and Reasons of the Guardians and Wards Bill.

(Point III.—Voidance of alienations, &c., made by uncertificated Guardians.)

ly occur in the Courts where minors, on attaining majority, sue to contest alienations of their property made during their minority by persons purporting to act as their guardians. In these cases, which are not numerous, I should say that the alienations contested are upheld as often as they are set aside, and my experience is that in a very small minority of the cases does it appear that the guardian has really abused his powers as such, or seriously neglected the interests of his ward, or in fact acted otherwise than for the benefit of the minor. Any dishonesty which appears is usually that of the minor or his advisers, who, finding when the former comes of age that property which during his minority was sold for fair value and for his benefit has much increased in value of late years, immediately seek to repudiate the transaction with the sole view of preventing the *bonâ fide* purchaser from reaping the fruits of what has eventually turned out to be a profitable bargain. I therefore think that the objections so forcibly put forward in paragraph 7 of the Government of India Resolution deserve the greatest weight and consideration so far as the Punjab is concerned."

91. MR. R. J. CROSTHWAITE,—
referring to paragraph 7 of the Resolution, says litigation regarding transactions effected by guardians arises, according to his experience, almost entirely from rightful guardians abusing their powers, and occurs generally where the Hindu law is applicable, the question usually raised being whether the minor is bound by the act of the manager of the family property.

92. MR. BEHARI LAL BASU,—
referring to paragraph 7 of the Resolution, argues that the difficulties there stated as likely to be caused to guardians by the adoption of Mr. Justice Melvill's proposal (*a*) ought not to be allowed to prevent the enactment of any provision tending to the welfare of the minor, whose interests it is the duty of the State to protect; and he considers that proposal well calculated to check the proceedings of dishonest guardians.

He suggests that, if that proposal is adopted, something should be done to reduce court-fees chargeable on the certificates of guardians.

Referring to the possible objection that the general requiring of certificates would tend to upset the joint family system, he says "there is a marked change in the advanced parts of India, where the true notions of the joint family are disappearing."

93. LIEUTENANT-COLONEL GRACE—
says that in the Central Provinces "litigation does not arise from persons wrongfully usurping the position of a guardian, but it often arises from rightful guardians abusing their powers in respect to transactions effected by them."

He does not think it necessary to adopt proposal (*a*), observing that the interests of minors "are otherwise sufficiently guarded, inasmuch, as they, on attaining majority, can, within the time allowed by the Statute of Limitation, question the acts of their guardians during their minority and take legal action; and guardians, purchasers, &c., on whom the *onus probandi* is thrown, have to justify and vindicate their doings."

94. THE CHIEF COMMISSIONER OF THE CENTRAL PROVINCES—
regards proposal (*a*) as unnecessary and impolitic. The taking out of a certificate, he says, affords no guarantee that the holder will not abuse his trust; while, on the other hand, such a provision as is proposed would tend to hasten unduly the disintegration of the joint family system, which is already proceeding fast enough.

95. THE COMMISSIONER OF THE TENASSERIM DIVISION—
considers that "any change in the direction of making the obligation to take out a certificate, &c., more stringent than at present, as suggested by Mr. Justice Melvill, is, in the present condition of this province [British Burma], much to be deprecated."

He continues: "My reasons for holding this opinion are so clearly stated in paragraph 7 of the Resolution, which, I think, is applicable to all legislation of this description, that it is unnecessary to go into them; but I may add that in this province, during the years when the Special Court maintained that the Indian Succession Act was practically applicable to all classes, the real hardship and unnecessary litigation which such measures really inflict on all, but especially on the poorer and more ignorant portion of the population, in a country like this, were very clearly brought to light."

96. THE RECORDER OF RANGOON—
agrees with the Government of India that the balance of considerations is in favour of not adopting proposal (*a*).

97. THE JUDICIAL COMMISSIONER OF BRITISH BURMA—
does not approve of proposal (*a*).

He writes: "It seems to me that the time cannot be far distant when administrative arrangements could be made enabling a specific class of local officials corresponding to the *Juges de Paix* of the Code Napoleon to watch over the interests of minors by controlling the appointment of guardians and nominating a *conseil de famille* and surrogate guardians in certain localities for every minor therein. Great hardship would, I consider, be involved in the general application of Mr. Melvill's principle so long as the District Judges' Courts are the only Courts which can deal with such matters."

98. THE CHIEF COMMISSIONER OF BRITISH BURMA—
considers the reasons stated in paragraph 7 of the Resolution justify the rejection of proposal (*a*).

99. MR. J. KNOX WIGHT—
fully concurs in the reasons advanced by the Government of India in paragraph 7 of the Resolution for rejecting proposal (*a*). That proposal, he says, involves a great change in existing customs for which no necessity has been made out.

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(Point IV.—Whether Court's sanction should be required to alienations.)

100. MR. H. MUSPRATT—

concurs in the remarks in paragraph 7 of the Resolution.

101. BABU KOYLAS CHUNDER GHOSE—

observes that the adoption of proposal (*a*) would seriously affect the interests of minors, especially in cases where there are numerous sub-divisions of an estate.

102. COLONEL W. HILL, COMMISSIONER OF COORG—

says the objections to proposal (*a*) which are stated in paragraph 7 of the Resolution apply fully to the circumstances of Coorg.

103. THE RESIDENT AT HYDERABAD—

says that if proposal (*a*) is adopted, certificates would be necessary before almost any transaction affecting the immoveable property of a minor could be entered into. "The number of applications for certificates would be vastly increased; and the benefit accruing to the property of minors in a small minority of cases would be counterbalanced by the detriment to property for want of necessary action during the delay which the process of obtaining a certificate would entail. Nor would the adoption of this proposal avert that class of injury which arises from the abuse of their powers by lawful guardians."

[See also remarks by Mr. J. W. Chisholm in paragraph 37 of précis.]

Point IV.—Whether Court's sanction should be required to alienations.

104. In regard to Mr. Justice Melvill's proposal (*b*)* taken separately, the Government of India thought it might be partially adopted, even if proposal (*a*) were rejected (see paragraph 70 of précis). They wrote: "In cases in which no person has a legal claim to the guardianship, and the Court accordingly exercises a free choice in the selection of the guardian, it seems clear that the sanction of the Court to the sale or alienation of immovable property should be required, as in such cases the Court is in a certain sense answerable for the guardian; but when the Court merely decides that a person is entitled to the guardianship by appointment, and also when it decides that a person is entitled thereto by virtue of relationship, the necessity of insisting upon such a restriction is perhaps open to doubt. In these cases it might suffice if the guardian were allowed the option of submitting the transaction to the Court for sanction, if he thought it necessary to do so for his own protection or for the satisfaction of an intending purchaser of the property."

105. MR. HUTCHINS—

sees no necessity for making a distinction between a certificated and an uncertificated guardian; but if any is to be made, he thinks that proposed by the Government of India is reasonable. He thinks every guardian should have the option of bringing *any* important matter before the Court, and should (for the particular purpose of the reference, apparently) be required to take out a certificate.

106. MR. S. SUBRAMANIYA IYER—

strongly approves of Mr. Hutchins's suggestion that all guardians should have the option of applying to the Court for advice.

107. MR. WIGRAM—

writes:—

"As regards the alienation, whether by gift, sale or mortgage, of property in which minors have a joint interest, I think that it would save much litigation to enact that no such alienation or relinquishment of a minor's right should be valid without the sanction of the District Court, and that if the sanction of the Court was obtained, the alienation could not be challenged by the minor unless by a regular suit instituted on his behalf within six months. It would, of course, be requisite to provide that a formal inquiry should be held either by the District Court or through a Subordinate Court whether the alienation was necessary and expedient, and, if the mother was alive, her objection, if any, should be duly considered.

"I would expressly limit this jurisdiction to cases where a particular branch of an undivided family was represented by minors. The assent of the minor's father would, as now, imply the assent of the children."

108. MR. PLUMER—

thinks that in the case of certificated guardians the sanction of the Court should certainly be required, and that this is necessary in order to prevent derelictions of duty on the part of persons for whose conduct the Court is in a way responsible, and who would without such supervision be tempted to go wrong. He explains that this would not throw any great burden on the Courts, the number of certificated guardians not being large.

In the case of alienations, &c., by guardians whom the Courts have decided to be entitled by appointment or by virtue of relationship to act as guardian, he thinks it might be left optional to either the guardian *or the intending alienee himself* to apply to the Court to sanction the alienation.

109. MR. E. BARCLAY—

thinks that, at any rate in cases where it is proposed to sell immoveable property above a certain value, or to lease it beyond a certain term, or to encumber it beyond a certain amount, the sanction of the Court should be required (in the case of both certificated and uncertificated guardians, apparently). He points out that the case quoted by Mr. Justice Melvill (I. L. R., 5 Cal., 363) does not render alienations by certificated administrators absolutely unimpeachable, and that they can be set aside if fraud or illegality be shown; but he thinks the learned Judge's views might be met in the following way:—

*(*b*) That the provision in the second clause of section 18 of Acts XX of 1864 and XL of 1858, which requires the previous sanction of the Civil Court to any alienation or incumbrance of immoveable property by a certificated guardian, should be repealed.

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"The Act might provide that in all instruments of alienation and incumbrance of a minor's immoveable property, the manager or certificated administrator should be described as such, and that the order of Court sanctioning the alienation or incumbrance should be recited, and that it should appear on the face of the instrument that it is made in pursuance of such order; and the Act might declare that the title of the purchaser, lessee or incumbrancer taking under an instrument containing such particulars shall, in the absence of fraud or illegality, be held conclusive as against the minor and all persons claiming under him."

110. THE MADRAS BOARD OF REVENUE—

concur with the Government of India.

111. SIR CHARLES TURNER—

thinks the sanction of the Courtshould be required only in the case of alienations and incumbrances of large amount, and that no sanction should be required in the case of properties of small value, because the attendant expenses would prove a serious burden to the estate.

112. MR. JUSTICE WEST—

would, in the case of minors having a sole or separate estate, give all guardians the right to come into Court and get proposed transactions approved. As to guardians appointed by the personal law of the minor, he would not bind them any further than this; and as to those appointed—not merely recognised—by the Court, he would make them subject "to such restrictions as their certificates might impose."

113. SIR CHARLES SARGENT—

thinks "the consent of the Court should be required in all cases to give effect to alienations (except leases for a short term of years) and incumbrances of or upon the minor's immoveable property, as well as to any compromise of the minor's interest in that property, and that, too, as well by the certificated administrator as by any other person claiming to have charge of the property." He thinks "that the importance attached to the granting of a certificate is greatly exaggerated, and that the powers of such administrator without the consent of the Court should be confined to what is strictly management."

He suggests that the permission to alienate or encumber should be given by the Civil Court of the district in which the property in question is situated, where the minor has property in more than one district.

114. THE HON'BLE MR. PAUL—

thinks the modification suggested by the Government of India might perhaps be safely adopted, but that the relinquishment of control should not extend any further. He does not think purchasers should be protected any further than they are at present in their dealings with a minor's estate.

115. MR. T. T. ALLEN—

dissents from Mr. Justice Melvill's proposal (*b*). He considers it necessary to retain the second clause of section 18 of Act XL of 1858. Where a minor's property is considerable, he says, a certificate is almost invariably taken out, and the great value of the Act is in the protection which the clause in question affords the minor against improper alienation of the *corpus*; while when alienation is necessary the sanction of the Judge, which is almost conclusive evidence of the *necessity* of the sale, vastly strengthens the purchaser's security, so that a better price is realised.

116. THE JUDGES OF THE CALCUTTA HIGH COURT—

see no objection to repealing the second clause of section 18 of Act XL of 1858.

117. MR. JUSTICE STRAIGHT—

thinks clause 2 of section 18 should be retained and that all guardians appointed by the Court, whether in right of a will or deed or by its own selection, should be brought within its purview.

118. MR. H. J. SPARKS—

approves of the Government of India's proposals. (Please also see his remarks in paragraph 160, *infra*.)

119. MR. B. W. COLVIN—

approves of Mr. Justice Melvill's proposal to repeal the clause. His experience shows that the Court is commonly unable to obtain evidence upon which to form an opinion with any confidence as to the necessity or expediency of a proposed alienation; and, on the other hand, the sanction is apt to become a dangerous screen to the misdoings of guardians. The only practical value of the clause, he says, is that it gives some publicity to a guardian's doings; but this is scarcely *necessary*, and the advantage, moreover, such as it is, is more than counterbalanced by the considerations stated above. The real checks are to be found in the intervention of the minor's other relatives and friends, and in the liability of the guardian to being hereafter called to account by the minor himself; and when these fail, the Court's sanction in particular cases supplies no effective substitute for them.

120. MR. DUTHOIT—

does not think Mr. Justice Melvill's proposal to repeal the clause altogether is well-advised; but he sees no objection to a modification of it by the substitution of the words "longer period than that of the minority of the proprietor" for the words "period exceeding five years."

(Please also see his remarks in paragraph 194, *infra*.)

121. THE LIEUTENANT-GOVERNOR AND CHIEF COMMISSIONER, NORTH-WESTERN PROVINCES AND OUDH,—

is disposed to agree with Mr. Justice Melvill, though he thinks the matter does not seem so important as to require a special amendment of the existing law. He adds that "the suggestion made in paragraph 8 of the Resolution, that guardians by appointment or relationship should be allowed

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the option of submitting any transaction to the Court for sanction, seems open to the objection that it would be likely to produce on the part of guardians a disposition to produce for sanction only those transactions in which they wished to obtain an official screen to questionable proceedings."

(Please also see his remarks in paragraph 162, *infra*.)

122. MR. JUSTICE SMYTH—

writes:—

"I am inclined to agree in the views of the Government of India as expressed in paragraph 8 of the Resolution. But where a guardian who owes his status merely to the act of the Court makes an alienation of immoveable property without the sanction of the Court, I am of opinion that the alienation should not be treated as absolutely void. If it appear that the parties to the alienation acted in good faith, and that the transaction was for the benefit of the minor, I do not think that the transaction should be held to be void merely because the guardian owed his status to the act of the Court and omitted to obtain the Court's sanction to the alienation. The *onus* of proving that the alienation was effected in good faith, and was for the minor's benefit, would be on the person who affirmed its validity."

123. LALLA MADAN GOPAL—

thinks the second clause of section 18 of Act XL of 1858 should be retained, and extended to all guardians, whether certificated or not.

He further suggests that an explanation should be added declaring that alienations made without sanction will be not absolutely void, but merely avoidable on proof that the guardian acted *mala fide*, and that the transaction was not a proper one.

124. LALLA MOHAN LALL AND MIAN ABDULLA, PLEADERS, OF AMRITSAR,—

suggest that, in the case of guardians other than those who owe their status to the mere act of the Court, the Court should be required to make a summary investigation as to the propriety of the alienation or encumbrance suggested: and further that a proviso be added declaring that "no such summary investigation should be held to be complete within the meaning of the Act unless the near relations of the minor, if any, or any friend interested in his welfare, have had an opportunity of protesting or objecting before the Court against the suggestions of the Public Curator or other administrator within a term to be fixed by the Court, of which due notice shall be given to them."

125. COLONEL C. A. MCMAHON—

writes:—

"I would leave the guardian to deal with the minor's property at his own risk. An *ex parte* reference by a guardian to a Civil Court for sanction to a proposed alienation might be very injurious to the minor's interests; for the Court would only have the *ex parte* representations of a possibly dishonest or interested man to go on.

"I do not think a reference of this character is worth the trouble and expense it involves, and I think it would be better for all concerned to leave the guardian to act on his own responsibility and risk."

126. MUHAMMAD LATIF—

considers it desirable to require the Court's sanction "where the Court exercises direct control over the property of the minor," but that sanction should not be required where the guardian holds his position by virtue of relationship or by virtue of a deed of appointment. In the latter case the guardian ought, he thinks, to be held responsible to the minor for his acts.

127. UMAR BAKHSH—

suggests that every transaction involving property of the value of Rs. 1,000 and upwards should be declared invalid unless it has the sanction of the Court.

128. COLONEL GURDON—

writes:—

"Where of course there is no person with any legal claim to the guardianship of a minor, *e.g.*, no kinsman or other person who according to the personal law of the minor can claim as a right the guardianship, and when in such case the Court has selected a person to administer the minor's property, it may no doubt be advisable and just that the previous sanction of the Court should be required to render valid any alienation of a minor's immoveable property; but the application of this restriction to cases where there are persons legally entitled to guardianship according to Hindu and Muhammadan law, is, I think, to be deprecated; at any rate, if such a provision be retained, its application should only be obligatory upon guardians 'appointed by the Court.' All other guardians might be allowed at their option to apply to the Court or not, if required for the satisfaction of an intending purchaser of the property (*vide* paragraph 8 of Government of India's Resolution)."

129. MR. H. T. RIVAZ—

considers the Government of India's proposals reasonable and worthy of adoption.

He suggests that the effect of an alienation by a certificated guardian without the Court's sanction might be made clearer than it is at present. He writes: "I take it that a sale or mortgage by a certificated guardian without the sanction of the Court is not absolutely void, but voidable at the option of the minor when he attains majority, if he chose to repudiate the transaction and, subject to a refund by the minor of so much of the consideration money as has been expended for his benefit or for the benefit of his estate. If this is not the law under the section as it at present stands, I think the section should be at least modified to the extent above indicated, and I should be glad myself to see the section go further and give the Court a discretion to refuse to set aside a sale (though the Court's sanction was wanting) if it was made clearly to appear that the transaction was a *bonâ fide* one made in the inter-

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ests of the minor. This would cause no hardship to the minor, as in such cases it is a well-established principle that the *onus* lies upon the party contracting with the minor's representative to show that the transaction was *bonâ fide* and for the benefit of the minor."

130. Mr. R. J. CROSTHWAITE—

fully concurs in the Government of India's proposals.

131. MR. J. W. CHISHOLM—

would repeal the second clause of section 18, because in cases of alienation no real check can be applied by the Civil Court, and consequently the sanction contemplated by the clause is often given on incomplete information, and places additional difficulties in the way of a minor should he sue on obtaining his majority, to set aside any alienation made by his guardian as unnecessary. Such suits can, he says, always be brought, and by this means minors often recover properties wrongfully alienated.

132. THE CHIEF COMMISSIONER OF THE CENTRAL PROVINCES—

concurs in the Government of India's proposals.

133. THE RECORDER OF RANGOON—

would retain the second clause of section 18. If it does not do much good, he says, at all events it does not do much harm.

134. THE JUDICIAL COMMISSIONER OF BRITISH BURMA—

thinks the clause should be retained. He writes:—

"It is quite true that in granting sanction under the Act the Court has nothing to guide it but the *ex parte* statements of the administrator himself, but in the absence of complete arrangements (such as those alluded to in the preceding paragraph)* the necessity of obtaining sanction acts as a wholesome though partial check, and should not, in my opinion, be done away with."

135. THE CHIEF COMMISSIONER OF BRITISH BURMA—

says there appears to be no sufficient reason for repealing the clause.

136. MR. J. KNOX WIGHT—

thinks the clause should be retained, because it tends to the benefit of the minor and the purchaser alike as well as to the protection of the guardian. The necessity for moving the Court, he says, prevents the making of improper bargains.

(Please also see his remarks in paragraph 179, *infra*).

137. COLONEL W. HILL—

agrees that "it will suffice if guardians are allowed the option of submitting transactions to the Court for their own protection or for the satisfaction of an intending purchaser of property."

138. THE RESIDENT AT HYDERABAD—

approves of the Government of India's proposals.

[See also remarks by—

Mr. W. Wilson in paragraphs 74 and 151 of précis;

Mr. Justice Melvill, in paragraph 78 of précis;

the Hon'ble Mr. O'Sullivan, in paragraph 154 of précis;

Mr. Justice Oldfield in paragraph 227 of précis;

Mr. Justice Field, in paragraph 258 of précis;

Khan Ahmad Shah, in paragraph 296 of précis; and

Sardar Gurdial Singh, in paragraph 297 of précis.]

Point V.—Right of certificated administrator to appear in Court.

V.—Whether, assuming it to be the intention of the legislature (see sections 464, 440 and 441 of the Code of Civil Procedure) that a guardian appointed under the Minors' Act possesses no right as such to appear on behalf of a minor, but that he must sue as next friend or be appointed to defend as guardian ad litem, *the Code of Civil Procedure should not be amended so as to make this more clear.*

139. MR. HUTCHINS—

would require that every one suing on behalf of a minor should either have taken out a certificate or obtained the previous leave of the Court—the latter provision to meet cases where the rightful guardian is the defendant or is interested in the defendant or is averse to taking legal proceedings.

He adds that where the minor is a defendant the intention seems to be that he should be sued as under the protection of his guardian, where one has been certificated or appointed by the Court of Wards or a Civil Court, section 443 of the Civil Procedure Code being to this extent controlled by section 464; and that it is only where there is no such guardian that the particular tribunal is to appoint a guardian *ad litem*.

140. THE HON'BLE MR. O'SULLIVAN, ADVOCATE GENERAL OF MADRAS,—

suggests that in all suits against a minor the administrator should be made a party as guardian *ad litem*, but that the Courts should have power to permit a friend or relative of the minor also to appear to defend the suit in cases in which such a course appears to be advisable; also that the administrator should have authority to institute suits on behalf of the minor, with power to the Court to give the conduct of any particular suit, or classes of suits, to any person named, other than the administrator.

141. THE MADRAS BOARD OF REVENUE, MR. H J. SPARKS, LIEUTENANT-COLONEL GRACE AND THE JUDICIAL COMMISSIONER OF BRITISH BURMA—

agree with the Government of India that the Code should be amended in the direction indicated.

142. SIR CHARLES TURNER—

suggests that "except where the conduct of the guardian is impugned or his personal interest is in conflict with that of the minor, the Court should be required to recognise as guardian *ad litem*, if

* See paragraph 97 of précis.

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(Point V.—Right of certificated administrator to appear in Court.)
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he be willing to undertake the duty, the person who, by the personal law, is entitled to the guardianship or who has been appointed to the charge of the minor's property by a Court of competent jurisdiction or by the Court of Wards."

143. MR. JUSTICE WEST—

thinks no person wishing to sue as next friend on behalf of a minor should be subjected to any restriction other than those involved in proper rules as to costs.

He further thinks it might be explicitly provided that an administrator duly appointed should, as such, be a tutor capable of representing the minor in all litigation without further appointment.

144. MR. B. W. COLVIN—

sees no reason why there should be any separate application to be appointed guardian *ad litem* in cases where there is a certificated guardian. The certificated administrator should, he thinks, be *ex officio* guardian *ad litem* to the minor in his charge.

145. THE LIEUTENANT-GOVERNOR AND CHIEF COMMISSIONER, NORTH-WESTERN PROVINCES AND OUDH,—

"agrees that if any amendment of the law is to be undertaken, it would be well to amend the Code of Civil Procedure so as to make it clear what is the status of a guardian appointed under the Minors' Act in respect of suits instituted on behalf of or against the minor whom he represents."

146. MR. H. MUSPRATT—

says Chapter XXXI of the Civil Procedure Code, "gives rise to no difficulty in the appointment of next friends or guardians *ad litem*, and nothing has yet come under notice so as to call for any modification of the provisions."

147. COLONEL W. HILL, COMMISSIONER OF COORG,—

writes :—

"Guardians who have obtained a certificate under the Minors' Act should be empowered to sue as such without the further intervention of the Court as required by section 443 of the Civil Procedure Code : at the same time an order of any Court appointing a guardian should not be held as giving any one who has not obtained a certificate any further authority over a minor."

[See also remarks by—

Mr. Plumer, in paragraph 6 of précis :

Sir Charles Sargent, in paragraph 13 of précis :

the Hon'ble Mr. Paul, in paragraph 14 of précis ;

Muhammad Latif, in paragraph 29 of précis ;

Umar Bakhsh, in paragraph 30 of précis ;

Colonel E. P. Gurdon, in paragraph 31 of précis ;

Mr. H. T. Rivaz, in paragraph 32 of précis ;

Sardar Gurdial Singh, in paragraph 34 of précis ;

Mr. Behari Lal Basu, in paragraph 36 of précis ;

Mr. J. W. Chisholm, in paragraph 37 of précis ;

Lieutenant-Colonel Grace, in paragraph 38 of précis ;

the Recorder of Rangoon, in paragraph 40 of précis ;

the Judicial Commissioner of British Burma, in paragraph 41 of précis ; and

Mr. Wigram, in paragraph 370 of précis.]

Point VI.—Declaration as to powers of Guardians.

VI.—Whether the first clause of section 18 of Act XX of 1864 and Act XL of 1858 should not be amended so as to provide that a guardian by appointment or relationship should, when his title is declared by the Court, possess simply the same powers which he possessed before procuring a declaration of title, and that the order of the Court should have no effect except that of declaring his status ; and further,

(a) Whether, if the powers of a guardian who owes his status to the mere act of the Court are defined at all, they should not be defined in some way which would indicate that persons having transactions with him should bear in mind his representative character, and should not deal with him as they would if he were acting on his own account.

148. The Government of India specially invited suggestions on the latter of these two points. The remarks contained in the following paragraphs which refer to this point are marked "[a]" on the margin.

149. MR. HUTCHINS—

observes that Madras Regulation V of 1804, section 21, clause fourth, gives no greater powers to a guardian appointed by the Court of Wards or the Zila Court than to other persons acting as guardian. As an indication of what the law should be on this point, he refers to his remarks noted in paragraph 71 of this précis.

150. MR. PLUMER—

says the legal powers and liabilities of guardians, whether acting by virtue of appointment, relationship or selection by the Court, are the same, and he sees no advantage in defining the powers of either class. Persons dealing with guardians may well, he thinks, be left to protect their own interests.

151. MR. W. WILSON—

writes as follows :—

"With reference to paragraphs 8 and 10 of the Resolution, I have to observe that where the instrument of appointment defines the powers of a guardian, he can deal with the property in accordance therewith without reference to the Courts. A guardian by relationship however and a guardian by appointment whose powers in respect of the property are not defined in the instrument of appointment are in precisely the same position as guardians appointed by the Court, and there is therefore no reason for relieving them of obligations—such as reference to the Court before sale—

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which are imposed on guardians appointed by the Court, nor of subjecting them to disabilities to which Court-appointed guardians are not liable. I think therefore that in the cases of guardianship by relationship and guardianship by appointment, where the instrument of appointment does not define the powers of the guardian, the order of the Court should operate merely as a declarator of status, but should, subject to the same conditions, confer on such guardians all powers possessed by Court-appointed guardians. I would further suggest that, where, in the case of guardianship by appointment, the instrument of appointment in the opinion of the Court restricts the powers of the guardian to the detriment of the minor, his powers should be extended in such manner as the Court may direct, the exercise of such extended powers by the guardian being subject to the provisions of section 18 [of Act XX of 1864]. From the operation of the second clause of this section all acts of guardians by appointment in pursuance of their instruments of appointment should be expressly exempted, but in all other ceses the provisions of the section should in my opinion be strictly maintained."

152. MR. E. BARCLAY—
considers that, in cases where a Court decides that a person is entitled to a certificate of administration by virtue of appointment or by relationship, the same strictness should be required as to accounting for moveable property and as to the alienation or incumbrance of immoveable property, as in other cases, excepting that in the former case, he would not require the administrator to furnish security. He would, however, expressly give the Court power to refuse a certificate for good cause shown.

He further thinks the duties of the manager (Collector) and the certificated administrator should be defined with as much particularity as possible, so as to prevent mistakes on the part of a Collector who might have to take temporary charge of a minor's estate, or on the part of others who might go wrong through ignorance.

153. MIR ANSAR-UD-DIN—
[a] concurs in the Government of India's proposals.

154. THE HON'BLE MR. O'SULLIVAN—
writes :—

"The Act should define and limit the powers of persons to whom certificates of administration may be granted with regard to managing, charging or alienating the property of minors, and I think the sanction of the Court should be required in order to render valid any alienation of immoveable property of a value exceeding Rs. 500."

And, again,

"I think it of the utmost importance either that the power of the administrator to deal with the property of the minor should be defined in the Act, or that the sanction of the Court should be required, so that third persons may be able to rely upon the title of the administrator and his capacity to bind the interests of the minor; and, in order that the interests of the minor may not be sacrificed, the Court should be at liberty to entertain objections by a friend or relative of the minor against any proposal or application by the administrator."

155. MR. J. W. HANDLEY—
thinks that if the powers of guardians are to be defined at all, the definition given in Acts XX of 1864 and XL of 1858, section 18, should be considerably narrowed. He suggests that the Courts might be left to decide in every case, in accordance with the well-established rule, whether the action of guardians has been consistent with the proper discharge of their duties.

156. MR. G. MUTTUSWAMY CHETTIAR—
agrees with Mr. Handley.

157. THE MADRAS BOARD OF REVENUE—
"would suggest whether it might not with advantage be enacted that, in dealing with the property of their wards, guardians (including those owing their status to the mere act of a Court) should have the rights and powers, and be subject to the duties and liabilities, of a trustee, as laid down in the Indian Trusts Act, II of 1882."

158. SIR CHARLES TURNER—
recommends that, where the guardian derives his powers solely from the act of the Court, these powers should be defined.

He further suggests provision being made that, except when the powers of a guardian are extended by the personal law of the minor or a special direction of the creator of the trust, his powers of investment shall be limited by the provisions of section 20 of the Trustee Act [? Trusts Act, II of 1882.] He says that applications are not unfrequently made and granted for the issue of certificates to collect debts to the guardians of minors who, if of age, would be entitled to represent this estate of the deceased, and that there is at present no statutory provision authorizing this procedure.

159. MR. JUSTICE FIELD—
says section 18 of Act XL of 1858 has given rise to a considerable amount of litigation.

He thinks the expression "may exercise the same powers in the management of the estate as might have been exercised by the proprietor if not a minor" has not been happily chosen, and that the powers of a manager ought to be defined in other language. "According to English Law," he says, "a lease made by a testamentary guardian to last beyond the minority of the ward was absolutely void as soon as the infant came of age. A Statute was subsequently passed (11 Geo. IV and 1 Wm. IV, cap. 64) under which an infant or his guardian might, with the sanction of the Court, accept renewals of leases and grant leases which should be valid, although they exceeded the period of the minority of the infant. The practice under this Act will be found in Chapter XLV of Mr. Daniell's Chancery Practice, and the principle of these Statutes deserves

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(Point VI.—Declaration as to powers of Guardians.)

consideration in considering any amendment of Act XL of 1858."

He also observes that the clause authorising certificated guardians to collect and pay all just claims, debts and liabilities due to, or by, the estate of the minor would seem to indicate that a person who has obtained a certificate under the Minors' Act is entitled to collect debts without any further authority, but that this view has not always been taken by the Courts. He gives a reference to *In re Raisanissa Begum*, 2 B.L.R., 129.

(Please also see his remarks in paragraph 258, *infra*.)

160. MR. H. J. SPARKS—

considers that guardians who owe their status to the mere act of the Court "should have power similar to those exercised by managers appointed by the Court of Wards, and should have no power to alienate or encumber the minor's immoveable property, or to dispose of any valuable moveable property, without the orders of the Court. They should, in fact, be servants of the Court."

161. MR. DUTHOIT—

writes regarding the Government of India's proposal as follows:—

"I do not think this proposition feasible further than that the guardian, when transacting business on the part of the minor, might be required to [a] describe himself as guardian of the minor. I am unable to distinguish, as regards the management of a minor's affairs, between the status of a 'legitimate' and the status of a 'dative' guardian. Unless the action of the guardian, in the absence of fraud or collusion, fully binds the minor, the interests of minors would suffer."

In this connection he refers to some remarks of Mr. Justice Markby pointing to the duty of persons dealing with representatives to satisfy themselves that the latter are acting for the benefit of their principals.

162. THE LIEUTENANT-GOVERNOR AND CHIEF COMMISSIONER OF THE NORTH-WESTERN PROVINCES AND OUDH—

says it is clear that a guardian by appointment or relationship should acquire no fresh powers to deal with the estate through the act of the Court in recognising his title; and that a guardian by appointment should, in consequence of such recognition, lose no powers already vested in him; and that in this respect section 18 of the Minors' Act seems to require amendment.

He thinks there is reason for supporting the suggestions made by Mr. Sparks (paragraph 160, *supra*). He continues:—"Another suggestion may be made, namely, that if it be made clear that guardians by appointment or relationship acquire no new powers through the Act of the Court in declaring their status, guardians appointed by the Court should be permitted to exercise, with respect to the property concerned, all the powers which the owner might exercise if not a minor, subject to the limitation already provided in the second clause of section 18, and subject also to any further limitations which the Court might think fit to impose at the time of granting the certificate. If the proposal made by Mr. Justice Oldfield [see paragraph 363, *infra*] for the taking of bonds for due administration of the trust be adopted, the powers that would thus devolve on guardians would not be unduly large."

In regard to the second point mentioned in paragraph 10 of the Government of India's Resolution, the Lieutenant-Governor and Chief Commissioner thinks no special provision is necessary, as it would be the duty of all interested persons to ascertain for themselves the extent of the guardian's powers, and they can do so at very small cost.

163. MR. JUSTICE SMYTH—

writes:—

"I think the form of certificate given to a guardian should be prescribed by the Act, and it should indicate clearly the extent of the powers conferred on the guardian. Two forms might be prescribed,—one for guardians who owe their status to appointment or relationship, and the other for guardians who owe their status to the mere act of the Court. In this way any person dealing with a certificated guardian will have only to ask him to produce his certificate, and will be able to ascertain from it the nature of the [a] powers which he exercises."

164. LALLA MADAN GOPAL—

submits a list of restrictions of sorts which he thinks should be placed on the powers of guardians.

165. LALLA GIRDHARY LAL, PLEADER OF DELHI,—

thinks one of those restrictions, *viz.*, that a guardian should not be allowed to arrange for a ward's marriage without the permission of the Court, should not be prescribed, because it would cause unusual and unnecessary litigation.

166. LALLA MOHAN LALL AND MIÁN ASDULLA,—

think it right that the order of a Court should, in the case of guardians owing their status to the mere act of the Court, operate no further than as a declaration of status.

167. COLONEL C. A. MCMAHON—

writes:—

"I would limit the effect of taking out a certificate of administration to a mere authoritative declaration of status, leaving it to the minor, on attaining his majority, to contest the validity of the guardian's acts on their merits if so disposed. I think it most undesirable to place any restriction on the power of the minor to impeach the conduct of the guardian (see Mr. Justice Melvill's Minute, page 3) on the ground that the latter took out a certificate or obtained the sanction of the Civil Court to his proposed alienation of immoveable property."

168. MUHAMMAD LATIF—

says the first clause of section 18 gives the guardian greater powers than are allowed him under

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either the Hindu or the Muhammadan law; he thinks this very objectionable, and suggests that "a certificated guardian should be placed on no better footing, on the mere strength of the certificate he holds, than that which he held originally, namely, when he held no such certificate, and the effect of the certificate should be no more than to declare his status;" and further:—

"As to the definition of the powers of guardians who owe their status to the mere act of the Civil Court, I think it enough to say that these powers are well defined in the Hindu and Muhammadan law, and no change is desirable."

[a] He also thinks it should be expressly declared (1) that the guardian in dealing with the minor's property is acting merely in his representative capacity, and (2) that his acts shall be open to objection by the minor, (*i*) if the latter, on attaining the age of puberty, finds his interests were prejudiced by the guardian's acts, whether sanction was obtained to the alienation of his immoveable property or not, or (*ii*) on the ground of fraud or collusion between the manager and the dealer, or (*iii*) on the ground of some misrepresentation of facts within the knowledge of the purchaser at the time the sanction was obtained.

169. UMAR BAKHSH—

thinks it very desirable that the powers of guardians of all kinds should be defined. He argues that unless this is done confusion will result, with reference to the varying rules of Hindu law, Muhammadan law and custom and the powers supposed to be derived from the Court making an appointment; also, that it is desirable that guardians appointed by the Court should be definitively given wider powers, for the benefit of the minor, than they would have under either the Hindu or the Muhammadan law.

His reason for placing all guardians on the same footing in this respect is that different rules applying to different classes of guardians seem unnecessary and would cause complications.

He thinks the powers given by clause 1 of section 18 of Act XL of 1858 should be maintained with this amendment, that the minor shall have the right, on attaining his majority, to impeach the acts of his guardian on the ground of fraud or gross carelessness on his part.

[a] He agrees with the Government of India that the powers of all guardians should be defined in some way which would indicate that they should not be dealt with as if they were acting on their own account.

170. COLONEL GURDON—

says "there is much truth in Muhammad Latif's arguments. [paragraph 168, *supra*] against the retention of section 18 of Act XL of 1858, especially with reference to the different relative powers which a guardian of a minor and the minor himself, if he were not thus disqualified, possess."

171. MR. H. T. RIVAZ—

considers the first of the Government of India's proposals good, but doubts the advisability of attempting to carry out the second. He says the [a] general principles of law requiring that in dealing with representatives special caution should be exercised are well understood, and he fears that "an attempt to exhaust this subject in a single section of a legislative enactment might lead to complications and difficulties instead of serving any useful end."

172. THE LIEUTENANT-GOVERNOR OF THE PANJAB—

agrees with Mr. Rivaz. [a]

173. SARDAR GURDIAL SINGH—

thinks the powers conferred by section 18, clause 1 of Act XL of 1858 are too wide.

He suggests that a simple provision should be made to the effect that guardians "apointed under the Act" [? certificated] have, subject to the general control of the Court, power to do all acts necessary for the proper management and protection of the minor's estate.

174. MR. J. W. CHISHOLM—

writes:—

"It is no doubt important that transactions entered into by guardians in good faith should not be liable to be set aside except for fraud or other adequate cause. Section 18, however, confers on a certificated guardian practically all the powers of a proprietor. As in point of fact the guardian only represents the proprietor owing to his temporary disability as a minor, and as there are circumstances under which the action of guardians in regard to the property can be subsequently set aside, in my opinion the wording of the section should be altered in the sense suggested in paragraph 10 of the Government Resolution."

175. LIEUTENANT-COLONEL GRACE—

approves of the Government of India's proposals. [a] He thinks the dealings of guardians with the persons in respect of the minor's property should be held to be those of a "trustee."

176. THE RECORDER OF RANGOON—

sees no objection to the Government of India's [a] proposals.

177. THE JUDICIAL COMMISSIONER OF BRITISH BURMA—

writes:—

"There can, in my opinion, be no doubt that the first portion of section 18 of Act XL of 1858 should be amended. The status of the guardian and the powers vested in him should be much more clearly defined; and I cannot but think that section 8 of Chapter II, Tit. X, Lib. I, of the Belgian Code might with advantage be consulted on this subject."

178. THE CHIEF COMMISSIONER OF BRITISH BURMA—

considers clause 1 of section 18 might with advantage be amended as suggested by the Government of India.

Précis of the Opinions referred to in paragraph 1 of the Statement of Objects and Reasons of the Guardians and Wards Bill.

(Point VII.—Effect of Court's sanction to alienations.)

179. MR. J. KNOX WIGHT—

writes :—

"With reference to paragraph 10 of the Resolution, I am of opinion that the first clause of section 18, Act XL of 1858, should be so amended as to make the powers of the certificated guardians equal to those of non-certificated ones. I think section 18 is quite exhausted, and does not require any amendment; but if it is to be interpreted in the way Mr. Justice Melvill has done,* words may be added to it to make the powers of certificated guardians co-extensive with those of guardians appointed by virtue of relationship, excepting only in this point that the latter have uncontrolled power, whereas the former must secure the sanction of the Court in some cases.

[a] "As regards the concluding portion of paragraph 10, I think there is no necessity for introcing any technical provision in the matter indicated therein. Although no such provision is contained in the existing Act, no difficulty is said to have arisen in practice."

180. MR. H. MUSPARTT—

thinks it is necessary to define what powers guardians should exercise, whether by virtue of a certificate of appointment or of relationship.

181. BABU KOYLAS CHUNDER GHOSE—

[a] considers it is necessary to make any provision such as that suggested in the second clause of paragraph 10 of the Resolution.

[a] 182. COLONEL W. HILL—

concurs in the Government of India's proposals.

183. THE RESIDENT AT HYDERABAD—

concurs in the Government of India's proposals regarding the first point. He further makes the following suggestions :—

"The powers of a guardian who owes his status to the mere act of the Court should be specially defined at the time of his appointment, and should be limited to all acts necessary for the efficient management of the estate, the best lines to follow probably being those laid down for the duties and liabilities of trustees.† Any alienations extending beyond short leases, and any expenditure from the estate upon marriage or other ceremonies, should be prohibited except under the order of the Court."

[Please also see remarks by Mr. Justice West in paragraph 112, *supra*.]

Point VII.—Effect of Court's sanction to alienations.

VII.—Whether (if clause 2 of section 18 of Acts XX of 1864 and XL of 1858 is retained) it should not be made clear that the effect of the Court's sanction to sell, alienate, &c., any immoveable property is to give the purchaser a good title to such property, in the absence of fraud or collusion on his part.

184. The Government of India explained that if such is not the effect the sanction would, from the purchaser's point of view, afford little or no protection, and the minor's property would consequently be depreciated in value.

184A. MR. HUTCHINS, THE MADRAS BOARD OF REVENUE, MR. H. J. SPARKS, THE LIEUTENANT-GOVERNOR AND CHIEF COMMISSIONER, NORTH-WESTERN PROVINCES AND OUDH, MR. H. T. RIVAZ, THE CHIEF COMMISSIONER OF BRITISH BURMA AND THE RESIDENT AT HYDERABAD—

concur in the Government of India's proposal.

185. THE RECORDER OF RANGOON—

sees no objection to it.

186. MR. PLUMER—

thinks no hard-and-fast rule should be laid down as to the effect of the Court's sanction.

The mere sanction, without any declaration as to its effect, he says, is useful in affording a check on dishonest or incapable guardians; and he does not think it necessary to protect the alienee by declaring its effect, because the law as it stands affords him a sufficient guide.

187. MR. R. RY. A. L. V. RAMANA PUNTULU GARU, SUBORDINATE JUDGE OF MADURA,—

agrees with Mr. Justice West "that *bonâ fide* transactions affecting the immoveable property of minors, entered into by certificated administrators with the previous sanction of the District Court, should bind minors to the same extent as alienations made by the managing members of undivided Hindu families."

188. THE HON'BLE MIR HUMAYUN JAH, BAHADUR,—

agrees with the Government of India, but would say "in the absence of fraud (or collusion) on the part either of the guardian or of the purchaser."

189. SIR CHARLES TURNER—

writes as follows :—

"The 2nd clause of section 18, Act XL of 1858, does not confer on purchasers a title which the minor may not dispute. The sanction of the Court implies that the transaction as presented to it appeared to be for the interest of the minor. In order that the property of minors may not be depreciated by the difficulty of making as valid a title as can be made by an owner, it may be desirable to enact that where the Court is satisfied that the full market-value has been given for the property and [? that the guardian] has secured the investment of the price in certain specified securities, the title of the purchasers shall be defeated only on proof of fraud."

190. SIR CHARLES SARGENT—

thinks the title acquired by the alienee with the consent of the Court should be conclusive against the minor.

191. THE HON'BLE MR. PAUL—

discusses the case reported in I. L. R., 5 Cal., 363, quoted by Mr. Justice Melvill, which, he says, he does not understand to have decided that a sanc-

* See Home Department's Proceedings No. 168 for October, 1882, page 24.

† "Chapter III, Indian Trustees Bill." [? Indian Trusts Act, II of 1882.]

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tioned sale cannot be impeached on ordinary grounds. Mr. Paul "conceives that the object of clause 2 of section 18 of the Acts was to prevent any such dealings as those prohibited without sanction, and that the sanction is required for the benefit of the minor, and has no reference to the security of the purchaser." He "doubts the wisdom of discharging guardians from responsibility for such transactions or of protecting purchasers in them, unless the transactions are capable of bearing full scrutiny," and he "does not see how the depreciation of price in such a transaction can be avoided without accepting the risk of affirming transactions injurious to infants, and so doing more harm than any such depreciation in price can do."

192. MR. JUSTICE STRAIGHT—

thinks sanction should, except where it has been obtained by fraud or misrepresentation, be conclusive of the vendee's or mortgagee's title.

193. MR. B. W. COLVIN—

would do away altogether with the necessity for sanction (see his remarks in paragraph 119 of précis).

194. MR. DUTHOIT—

writes with reference to the Government of India's proposal as follows :—

"I would have a separate section in the Act enunciating this principle; but I would not confine it to cases in which immoveable property is alienated with the sanction of the Court. I think that guardians should be allowed to dispose of moveables, and to make temporary alienations of immoveables, without the sanction of the Court, and to alienate immoveables permanently with the sanction of the Court; and that as regards both sets of cases the full authority of the guardian to bind the minor, except of course in the event of fraud and collusion, should be declared."

(Please also see his remarks in paragraph 161, *supra.*)

195. LALLA GIRDHARI LAL—

considers that "an alienation made by a guardian with the Court's permission should be held conclusively binding on the minor unless he proves fraud."

196. UMAR BAKHSH—

suggests that the sanction of the Court should have no more effect than this, that the transaction shall be presumed to be binding on the minor unless he proves that both the guardian and the purchaser were guilty of fraud, or that the sanction was obtained by misrepresentation which was known to the purchaser.

197. MR. BEHARI LAL BASU—

suggests that the enquiry made by the Court before giving sanction should not be a summary one; and that friends and well-wishers of the minor should be given an opportunity to oppose an application for sanction, and should be allowed to prefer an appeal against the sanction when given. With these safeguards, he would enact that the sanction makes the transaction valid to all intents and purposes, and that the minor may impugn it, on reaching his majority, only on the ground of fraud or collusion.

198. LIEUTENANT-COLONEL GRACE—

approves of the Government of India's proposal, but would also insert "want of necessity" as a ground for disputing an alienation.

199. THE JUDICIAL COMMISSIONER OF BRITISH BURMA—

deprecates the amendment suggested by the Government of India. He writes :—

"The materials after the examination of which sanction is given are very unsatisfactory, and mistakes are often made. Looking to these circumstances, the title now given under the Act seems to me quite sufficient, and not too precise to be dangerous."

200. MR. H. MUSPRATT—

says the Court merely acts upon a one-sided statement or on proofs adduced by the applicant; and he would not, therefore, treat the sanction as conclusive evidence of the real necessity for the transfer when the ward, after attaining majority, desires to impeach the alienation.

Regarding the question of sanction, he further writes as follows :—

"I have found it a good plan to direct a Civil Court amin to make enquiries and to see that the creditors really do hold bonds, &c., duly executed by the previous owners.

"I think it would be advisable also to allow the District Judge to give his consent to the minor's representative jointly with the co-sharers creating under-tenures or giving long leases to parties wishing to employ capital on great industries such as tea, coffee, chinchona, quarrying, &c., on portions of an estate from which little or no profit is derived. The powers to the Judge on all these matters should be clearly defined, and he should have to sit with, say, two Assessors unconnected with either party when deciding such matters. Before any decision was given, the Judge and the Assessors should determine in what way publicity should be given to the applications to enable the reversioners or friends or any one to show cause against the said applications."

201. BABU KOYLAS CHUNDER GHOSE—

considers it unnecessary to make any such amendment as that proposed by the Government of India, because it is, he says, always understood that the Court's sanction will avail nothing if it was obtained by fraud or collusion.

[See also remarks by—

Mr. Justice Melvill, in paragraph 78 of précis;

Mr. Wigram, in paragraph 107 of précis;

Mr. E Barclay, in paragraph 109 of précis;

Mr. J. W. Chisholm, in paragraph 174 of précis;

Mr. Justice Field, in paragraph 258 of précis; and

Précis of the Opinions referred to in paragraph 1 of the Statement of Objects and Reasons of the Guardians and Wards Bill.

(Point VIII.—Extension of new law to Presidency-towns.)

Khan Ahmed Shah, in paragraph 296 of précis.]

Point VIII.—Extension of new law to Presidency-towns.

VIII.—Whether, if it should be decided to consolidate the law for the whole of British India, the new Act should not be extended to the original local jurisdiction of the Presidency High Courts.

202. The Government of India thought this might be done, a section like section 150 of Act V of 1881 being inserted to abolish the old jurisdiction. One advantage would be that the Government would be placed in a better position than at present for dealing with the question of the local operation of a guardian's appointment, and this might be arranged for by the insertion of a section like section 59 of Act V of 1881, making the appointment of a District Court operative throughout the province and giving the High Courts power to make an appointment to hold good throughout the entire local extent of the Act. A further question would, it was said, arise in connection with this point, namely:—

(b) whether the Courts in appointing guardians of property should not be given power to make appointments limited to particular property.

The remarks contained in the following paragraphs which refer to this last point are marked "[*b*]" on the margin.

203. MR. E. BARCLAY—
thinks it might be advisable to make the new Act applicable "to the Presidency-towns and to the High Courts;" but says that if this is done some difficulty might be felt in declaring who should be the temporary manager of a minor's estate in a Presidency-town pending an application for a certificate of administration.

He suggests that a certificate of administration should be made to extend throughout the province in which it is granted, and where specially so ordered by the Court granting it throughout the local extent of the Act; the powers of a temporary manager (in the Mufassal, the Collector), however, extending only over his own district.

[*b*] He thinks the suggestion on point (*b*) should not be adopted, because questions might arise as to who should represent the minor on legal proceedings being taken in respect of property not comprised in the limited appointment.

204. THE MADRAS BOARD OF REVENUE—
have nothing to urge against the proposal to extend the new Act to the Presidency-towns.

205. MR. JUSTICE WEST—
approves of that proposal.

206. MR. JUSTICE MELVILL—
[*b*] approves of all the Government of India's proposals under this head.

207. THE HON'BLE MR. PAUL—
thinks the law for the Presidency-towns and the law for the Mufassal should only be assimilated if the former is found suitable for adaptation to the Mufassal, as, being the more comprehensive, it should in his opinion form the model for legislation.

Referring to sections 2, 4, 5 and 10, *et seq.*, of Act XL of 1858, he argues that there is no local limit to the operation of certificates under the present law. He continues: "Consequently I do not see any objection to making the guardian's power extend generally to all the minor's property. It does not, of course, follow that the authority of the Court should be required to warrant dealing with a minor's property in all parts of the country: but where a guardian of the estate is required, I do not see why all the property of the minor in India, or at least in the Presidency, should not be in his charge. Any inconvenience which might arise from the property being widely scattered might be remedied by giving the Court power to limit its appointment to special property." [*b*]

208. MR. JUSTICE STRAIGHT—
says the proposal to enact a provision similar to the proviso to section 59 of Act V of 1881 would obviate difficulties of a kind which have more than once arisen in the North-Western Provinces.

209. MR. H. J. SPARKS—
approves of all the Government of India's pro- [*b*] posals under this head.

210. MR. B. W. COLVIN—
approves of the proposal to enact a provision similar to the proviso to section 59 of Act V of 1881.

211. MR. DUTHOIT—
considers there can be no objection to the proposal that a District Court certificate should hold good for a province, while applications for a certificate to hold good for the whole of British India should be made to the High Court.

212. THE LIEUTENANT-GOVERNOR AND CHIEF COMMISSIONER, NORTH-WESTERN PROVINCES AND OUDH,—
approves of the proposal to insert a section like section 59 of Act V of 1881, and also of the proposal on point (*b*). [*b*]

213. MR. BEHARI LALL BASU—
considers it desirable that the special procedure of the Presidency-towns should be abolished and the proposed Act made applicable to them as well as to the Mufassal.

In regard to point (*b*), he says there may be [*b*] instances in which a provision like that proposed by the Government of India may be required, but he thinks it preferable that one person only should have the responsibility of manging the entire estate of a minor.

214. THE RECORDER OF RANGOON—
sees no objection to any of the Government of [*b*] India's proposals under this head.

215. THE JUDICIAL COMMISSIONER OF BRITISH BURMA—
sees no objection to the extension of any general consolidated Minor's Act to the Presidency-towns, or to the proposal on point (*b*). [*b*]

216. MR. J. KNOX WIGHT—
considers the Government of India's proposals a [*b*] move in the right direction.

Précis of the Opinions referred to in paragraph 1 of the Statement of Objects and Reasons of the Guardians and Wards Bill.

(Point IX.—Personal application of new law.)

[See also remarks by—

Sir Charles Turner, in paragraph 221 of précis;

the Judges of the Calcutta High Court, in paragraph 226 of précis;

the Hon'ble Mr. O'Sullivan, in paragraph 248 of précis;

Sir Charles Sargent, in paragraph 254 of précis; and

Lalla Madan Gopal, in paragraph 351 of précis.]

Point IX.—Personal application of new law.

IX.—Whether the proposed new Act should not be confined to Hindus, Muhammadans and Buddhists, and other persons who have definite personal laws, and the European British Minors' Act, XIII of 1874, made applicable to all other classes of persons and its operation extended to the whole of British India, including the Presidency-towns, the jurisdiction of the High Courts in respect of European British minors being abolished.

217. The Government of India's views on this question were stated as follows:—

"As regards the classes of persons to whom the proposed Act should apply, it may be observed that the division which the law at present makes into European British subjects on the one hand, and all other persons on the other, involves the continuance of a state of things which is now passing away, and appears, moreover, to be based on no intelligible principle. It is not clear, for instance, why an Eurasian, who, though not a European British subject, is for all practical purposes on exactly the same footing, should be placed in the matter of guardianship in a different position from a European British subject. In this matter the only true distinction appears to be that recognized in the Succession Act, namely, between such persons as Hindus, Muhammadans and Buddhists, who have definite personal laws which the Government are bound to respect, and other persons who possess no such laws. From this point of view it appears to the Governor General in Council that the present opportunity might also conveniently be taken to make Act XIII of 1874 (the European British Minors' Act, 1874) applicable to the latter class of persons in the same way as the Succession Act is made applicable to them. If this were done, Act XIII of 1874 might be extended to the whole of British India, including the Presidency-towns, the jurisdiction of the High Courts in respect of European British minors being at the same time abolished. The proposed new Act would then be applicable to Hindus, Muhammadans, Buddhists and other persons exempted from Act XIII of 1874, and the law in regard to minors would be rendered simple and complete."

218. MR. W. WILSON—

approves of these proposals.

219. MR. E. BARCLAY—

thinks the new Act should apply to all minors being British subjects and possessed of property in British India, except infant members of an undivided Hindu family possessing merely an undivided share in the family property. "It would," he continues, "probably be thought advisable to incorporate some of the provisions of the European British Minors' Act, 1874, in the new Act, but I think, as a general rule, the certificated administrator should be appointed guardian of the minor's person. It would not, I should say, be desirable to appoint the temporary manager guardian of the person."

Mr. Barclay raises a question as to the power of the Indian legislature to abolish the jurisdiction of the High Courts over infants.

220. THE MADRAS BOARD OF REVENUE—

concur with the Government of India.

221. SIR CHARLES TURNER—

writes as follows:—

"An Act similar to Act XIII of 1874 might be framed, applicable to all Courts, including the chartered High Courts, and dealing with minors of all creeds and races, provided that it does not abridge any of the useful powers at present possessed by the chartered High Courts, that it contains a declaration that in the selection of guardians regard shall be had to the personal law of the minor, and that in making provision for the custody of the property of the minor who is a member of an undivided Hindu family, the Court shall, except in a case in which it is established that the interests of the minor have been actually imperilled, abstain from interference with the powers of the managing member.

"The object of the law is to provide for the maintenance and education of the minor in a manner suitable to his means and position and to protect his property, and the same measures which would secure these results in the case of Europeans, Eurasians and Native Christians would ordinarily be appropriate to the case of persons of other races or creeds."

222. MR. JUSTICE WEST—

writes:—

"A new Act should, I think, extend to all classes of the community. I cannot see why this scope might not be given to it. It would take for granted that under different laws there were natural or legal guardians, and proceed on that basis to prescribe their general duties and define their rights."

223. SIR CHARLES SARGENT—

thinks that as regards the separate property of a Hindu minor, and all the property of other minors "the general provisions of the Act of 1864 might be retained and extended to Europeans as well as natives." (His suggestions for the amendment of the Act in detail are noted elsewhere.)

224. MR. JUSTICE MELVILL—

approves of the Government of India's proposals.

225. THE HON'BLE MR. PAUL—

does not see that any distinction need be made between the various races, except as to the persons to be selected or recognized as guardians.

Précis of the Opinions referred to in paragraph 1 of the Statement of Objects and Reasons of the Guardians and Wards Bill.

(Point IX.—Personal application of new law.)

226. THE JUDGES OF THE CALCUTTA HIGH COURT—

concur in the views of the Government of India, and, if they are carried into effect, consider there would be no objection to extending the provisions of both Acts (that for Hindus, &c., and that for all other persons, including European British subjects) to the Presidency-towns, care being, however, taken to preserve any special jurisdiction at present vested in the High Courts.

227. MR. JUSTICE OLDFIELD—

writes as follows :—

"I think Act XIII, 1874, might, as suggested in the Resolution of the Government of India, be made applicable to [? persons other than] Muhammadans, Hindus and Buddhists in the same way as the Succession Act, with such modifications as may appear called for.

"The powers in section 16 [of Act XIII of 1874] conferred on guardians would be generally too restricted, and I see no object in requiring the Court's sanction to alienations, except in the cases referred to in paragraph 8 of the Resolution."

228. MR. JUSTICE STRAIGHT—

considers the principle put forward by the Government of India is a sound one.

229. MR. B. W. COLVIN—

thinks the Government of India's proposals correct.

230. MR. W. DUTHOIT—

contests the views expressed by the Government of India, as to the propriety of having separate enactments for Hindus, &c., and for Europeans and the like. He sees no necessity for making any such classification, and disapproves of the proposal on the ground of its being open to the objections attending "class legislation." He advocates the enactment of a single general law applicable to all classes; and he suggests that it should be based on Act XIII of 1874 (see paragraph 291, *infra*).

231. THE LIEUTENANT-GOVERNOR AND CHIEF COMMISSIONER, NORTH-WESTERN PROVINCES AND OUDH,—

says the proposals made by the Government of India require full and mature consideration.

In regard to the proposed extension of Act XIII of 1874, he writes :—

"The special jurisdiction of the chartered High Court of these provinces over European British subjects seems to stand thus. Section 12 of the Letters Patent of the Court confers on it the like power and authority with respect to the persons and estates of infants within the North-Western Provinces as that which is exercised in the Lower Provinces by the Calcutta High Court. It is believed that the Calcutta High Court exercises over infants the same jurisdiction that was conferred on the Supreme Court by section 25 of the Letters Patent of 1874. This section authorised and empowered the Supreme Court to appoint guardians and keepers for infants and their estates according to the order and course observed in England. The Lieutenant-Governor is aware that Act XIII of 1874 is in most respects a reproduction of the law of England regarding minors, and he recognises the great advantage of having that law codified in a readily accessible form. The advisability of conferring on the District Courts a jurisdiction concurrent with that of the High Court over European British minors may, perhaps, also be conceded. But if, in the exercise of their jurisdiction, the chartered High Courts now have regard to domicile in determining the period of nonage and other matters, Sir Alfred Lyall would, in the event of the proposed legislation being proceeded with, preserve the existing practice of those Courts, and extend it, in the case of European British minors, to those portions of British India to which Act XIII of 1874 now applies."

In regard to the proposal to pass two separate Acts, *viz.*, one for Hindus, &c., and one for Europeans and the like, he writes :—

"The division of the population into two classes—(*a*) those possessed of definite personal laws which the Government is bound to respect, and (*b*) other persons who possess no such laws—seems open to objection. It is true that this division was adopted in the case of Act X of 1865 and Act V of 1881; but the subject now under discussion and that covered by the two Acts just named differ in some important respects, and in any case it would seem that the appropriateness of the proposed division should be decided on its merits, and that it should not be adopted merely on the ground of analogy. It would seem to be considered that European British subjects, Eurasians, Pársis, Jews and the other miscellaneous classes of persons to whom Act V of 1881 [? X of 1865] applies have no definite personal laws which the Government is bound to respect. But it has already been shown that European British minors have a definite personal law, *viz.*, the law of England; and it seems hardly appropriate to place these persons in the category of those who have no personal laws which the Government is bound to respect. Besides, the distinction, as now worded, seems likely in practice to offend the susceptibilities of some of those classes of persons who are considered to have no personal laws that the Government is bound to respect, since it might create an impression that the Government regards itself as bound to respect the special laws of Hindus and Muhammadans more than those of Europeans and other classes of the community. If a measure were passed on the lines now indicated, it would be difficult to secure to any of the classes affected the enjoyment of their own personal law, by the insertion in the contemplated Act of a section similar to section 332 of Act X of 1865, which empowers the Governor General to exempt any race or tribe from the operation of the Act. Such a section might, indeed, be used to exempt

Précis of the Opinions referred to in paragraph 1 of the Statement of Objects and Reasons of the Guardians and Wards Bill.

(Point IX.—Personal application of new law.)

(Proposed consolidation and necessity for new legislation.)

a race or tribe which might be found to have a definite personal law which the Government was bound to respect; but its effect would be to bring the tribe so exempted under the second Act referred to in paragraph 13 [of the Resolution], which would apply primarily to Hindus, Muhammadans and Buddhists. For these reasons it seems desirable that the distinction recognized in the Succession Act should be not applied in the present instance without a full consideration of all the consequences that may flow from it."

232. COLONEL C. A. MCMAHON—

approves of the proposals of the Government of India.

233. SARDAR GURDIAL SINGH—

approves of the proposed class distinction.

234. LIEUTENANT-COLONEL GRACE—

thinks that "if it should be decided that a general consolidated Act is necessary for the protection of the person and property of minors throughout British India, it should be on the lines of the Succession Act, and apply to Hindus, Muhammadans, Buddhists, &c., as mentioned in paragraph 13 of the Resolution"

235. THE RECORDER OF RANGOON—

sees no objection to the Government of India's proposals.

236. THE JUDICIAL COMMISSIONER OF BRITISH BURMA—

thinks it would be in every way desirable to carry out the proposals made by the Government of India.

237. THE CHIEF COMMISSIONER OF BRITISH BURMA—

thinks it would doubtless be desirable to carry out the Government of India's proposals if any consolidated Act is passed.

238. MR. J. KNOX WIGHT—

considers the Government of India's proposals a move in the right direction.

239. COLONEL W. HILL—

agrees with the Government of India as to following the precedent of the Succession Act.

240. THE RESIDENT AT HYDERABAD—

agrees with the Government of India.

[See also remarks by—

the Hon'ble Mr. O'Sullivan, in paragraph 248 of précis; and

Mr. R. J. Crosthwaite, in paragraph 273 of précis.]

Proposed consolidation and necessity for new legislation.

241. In the following paragraphs (242 to 282) are noted the remarks and suggestions of Local Governments and officials relative to the proposed consolidation of the law relating to minors, and to the necessity for new legislation on this subject at the present time.

242. MR. H. WIGRAM—

considers it highly desirable to consolidate the law. He mentions that the Madras law is contained in the following enactments:—

Madras Regulation V of 1804,
Madras Regulation X of 1831,
Act XIX of 1841,
Act XXI of 1855,
Act XVI of 1858,
Act XXVII of 1860, and
Act IX of 1861.

In regard to some of these enactments he considers it desirable that amendments should be made as indicated below:—

He refers to a decision of the Madras High Court that under Madras Regulation X of 1831 the Civil Courts had no jurisdiction to appoint a guardian where the Court of Wards might take an estate in hand but did not do so; and suggests "that in the case of all large estates, whether they pay revenue to Government or not, the Court of Wards should continue to exercise jurisdiction, and that in smaller estates, where the minor is the sole heir, or where a distinct branch of an undivided family becomes, by the death of its head, represented by minors only, the District Court should have jurisdiction to appoint a guardian, and that preference should be given to the mother, if of sufficient capacity;" and further, as regards the custody of minors, "that the Courts should follow the same rule in the case of those subject to the Succession Act as in the case of those not subject to it, namely, that the Court should do in every case what it considers best for the interests of the minor."

He says Act XIX of 1841 is very rarely used because application under it must be made within six months.

And in regard to Act IX of 1861, he says:—

"Applications under this Act have been made to me regarding the custody of Muhammadan children whose parents were dead and disputes had arisen between the paternal and maternal relatives. I always felt a difficulty in deciding whether I ought to follow the Muhammadan law, or refuse to appoint as guardians persons excluded by section 19 of Regulation V of 1804."

243. MR. HUTCHINS—

gives a list of the enactments in force in the Madras Presidency regarding minors.

244. MR. PLUMER—

also gives a list, and says his experience has been that the law in Madras (so far as it refers to minors not subject to the Court of Wards) has been practically inoperative.

He agrees that a case has been made out for the amendment of the Bombay and Bengal Acts.

245. THE HON'BLE MIR HUMAYON JAH—

approves of the proposal to consolidate and amend the law.

246. MR. E. BARCLAY—

approves of the proposed consolidation and re-enactment of Madras Regulation V of 1804, Act XL of 1858, Act XX of 1864 and Act XIII of 1874.

Précis of the Opinions referred to in paragraph 1 of the Statement of Objects and Reasons of the Guardians and Wards Bill.

(Proposed consolidation and necessity for new legislation.)

247. MIR ANSAR-UD-DIN—

quotes the Regulations and Acts in force in Madras, and says he does not think they require any amendment. If the proposed consolidation is carried out, he recommends that the Madras law should not be modified during the process.

248. THE HON'BLE MR. O'SULLIVAN—

thinks "an Act, founded upon Act XL of 1858, might be applied to the whole of British India and to all classes of minors, except in cases where the Court of Wards has intervened."

241. MR. J. W. HANDLEY—

doubts whether any amendment of the Regulations (which he cites) in force in Madras is required. He thinks all that is necessary would be a short Act giving the Courts power to appoint guardians for all minors for whom none have been otherwise appointed (*i.e.*, those who have not been taken in hand by the Court of Wards), and this only in the event of the High Court, to whom the question had been referred, deciding that Madras Regulation X of 1831 cannot be construed so as to give this extended power as it stands.

He deprecates any legislation which would further facilitate the interference of the Courts with the action of guardians by relationship or appointment, thinking it best, for reasons which he gives, that suits against them should not be encouraged.

250. MR. P. SREENAVASA RAO, JUDGE OF THE MADRAS COURT OF SMALL CAUSES,—

agreeing with Mr. Handley, "deprecates any legislation which would unnecessarily interfere with the liberties of the people," and shows that the policy of the Madras legislature has always been to avoid such interference. On the question of the power of the Courts to appoint guardians for minors who have not been taken in hand by the Court of Wards, he quotes authorities showing that the Courts have full powers in such cases, but he would not object to a short Act declaring the law.

251. MR. G. MUTTUSWAMY CHETTIAR—

cites the law in force in Madras, and says he considers further legislation unnecessary. The only point in which that law fails, he says, is that it does not reach small estates; but this is unavoidable, both because of the peculiar constitution of Hindu families, and because the Collectors are already overworked.

He agrees with Mr. Handley in thinking a short declaratory Act might be passed of the nature, and in the circumstances, noted in paragraph 249 of this précis.

252. THE MADRAS BOARD OF REVENUE—

say the necessity for amending the law relating to minors *and other disqualified persons* in the Madras Presidency has long been acknowledged, and that some years ago a Bill was drawn up to introduce the requisite amendments, among which were some of those suggested in the Government of India's Resolution. The Board concur with the Government of India's proposal to consolidate the whole law for British India, and suggest (paragraph 8 of their Proceedings) that the new Act should extend not only to minors but to all persons incapacitated by sex, infirmity or imprisonment from managing their property.

They note that on the passing of the new Act the law relating to the Madras Court of Wards will require re-casting; they remind the Government of India that the Madras law relating to minors is contained in the following enactments:—

Mad. Reg. III of 1802	Act XIX of 1841
Mad. Reg. V of 1804	Act XXI of 1855
Mad. Reg. X of 1831	Act XIV of 1858,

and Act IX of 1861;

and they suggest that care should be taken to declare in the new Act that its provisions shall not extend to such estates, under the jurisdiction of the Court of Wards as the Court of Wards may think proper to take under its protection.

253. SIR CHARLES TURNER—

gives a review of the law in force in the Madras Presidency, showing (1) that it is, as interpreted by the Courts, defective in that it leaves certain minors without adequate protection, and (2) that it fails to provide sufficiently for the representation and protection of minors whose property becomes the subject of litigation. His remarks on the second of these points will be found abstracted in other parts of this précis: his remarks on the first point show—

(*a*) that "the Civil Courts in the Madras Presidency have, in the matter of guardianship, such general powers as are inherent in Courts which have jurisdiction to try all suits of a civil nature except where such jurisdiction is limited by enactment, and the District Courts have the powers conferred on them by the Regulations and Acts;"

(*b*) that under a High Court ruling of 1871, sections 3 of Madras Regulation X of 1831 is held to give no power to appoint guardians for minors whose estates the Court of Wards could have, but has not, taken under its management, or for minors entitled as co-parceners to estates paying revenue or rent directly to Government;

(*c*) that under section 3 of Madras Regulation V of 1804 the Local Government may decline to pass an order bringing an estate under the Court of Wards, although the Collector has made a report with a view to such an order being passed, and that it is obviously unreasonable to expect the Local Government to pass such an order in the case of raiyátwari estates (supposing the term "property" to include such estates), while there are other cases, too, in which the Local Government might, for excellent reasons, decline to pass such an order.

Sir Charles Turner says it cannot be desirable that in the cases mentioned the persons and property of minors should be left without protection, and that the necessity of affording protection has been shown by experience. He suggests, as regards estates held in co-parcenary, that excepting only in those cases where the co-parcenary con-

Précis of the Opinions referred to in paragraph 1 of the Statement of Objects and Reasons of the Guardians and Wards Bill.

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sists of a father and a son, the District Court should have power to appoint guardians where the Collector has satisfied himself of the necessity for intervention.

He also points out that Act IX of 1861 makes no express mention of the *property* of minors and does not empower the Court to confer power to deal with such property on the person whom it recognizes or appoints as guardian; also that it is defective in that it makes no express provision for the supersession or removal of a guardian once appointed. In regard to the first of these two points, he suggests that, in view of possible misapprehensions in the past as to the effect of recognizing or appointing a guardian, it may be desirable that in the contemplated legislation the acts of such guardians done *bonâ fide* in the interests of minors should be validated; and further that, in any case, it is obviously desirable that there should be an express declaration of the powers which, independently of the personal law of the minor, the Court is authorized to confer on a guardian in respect of a minor's property; also that the Court should have power to interfere and appoint guardians of the persons and managers of the property of minors either on the report of the Collector or of its own motion in cases subject to the jurisdiction of the Court of Wards in which the Government has declined to authorize the Court of Wards to take charge of the estate, or in other cases where there is no guardian or manager, and it is proved to be desirable in the interests of the minor that an appointment should be made.

In view of the defects mentioned in the foregoing clauses of this paragraph and the abstracts from his Minute noted in other paragraphs of this précis, Sir Charles Turner concurs in the proposal to consolidate and amend the law. He mentions that the Madras High Court in November, 1871, advised the Government of Madras that it would be desirable "to repeal the old enactments and by new legislation provide for the proper guardianship of minor proprietors and the management of their property," and further points out that "in view of the circumstances that the Regulations and Acts dealing with minors and their property are so numerous, and that the High Courts have in addition to administer the written and unwritten law of England in the case of European minors, the Indian Law Commission of 1879 indicated this branch of the law as specially calling for codification."

254. SIR CHARLES SARGENT—

thinks it highly desirable that there should be but one Act regulating the care and administration of the persons and property of all minors throughout British India.

He considers that an Act framed on the lines indicated in his Minute, with such other provisions as the English law may suggest, would be a valuable addition to the Indian Codes.

255. THE HON'BLE MR. PAUL—

thinks it would be desirable to assimilate the law for Bengal and Bombay, but cannot advise as to Madras. The fact that the Mitákshara law prevails in that Presidency should, he suggests, be taken into consideration.

Further on he remarks that Acts XL of 1858 and XX of 1864 are "obviously open to great improvement, both in language and substance."

256. MR. T. T. ALLEN—

says the points taken up in Mr. Justice Melvill's Minute of August, 1881, in every instance refer to matters wherein either the Bombay Act differs from the Bengal Act or the circumstances of Bombay differ from those of Bengal.

The Bengal Act, he says, works well and is now well known and understood, and he can see no good reason for interfering with it. He adds, "I think nothing can be so mischievous as, from a hankering after symmetry, to repeal a good law against which no complaints have been made, in order to re-enact it with some slight variations that are certain to escape notice by parties concerned, and thus lead to future loss and confusion." He is therefore opposed to any change being made in the law.

257. THE GOVERNMENT OF BENGAL—

concur generally in the views expressed by Mr. Allen, and see no sufficient reason for interfering with Act XL of 1858.

258. MR. JUSTICE FIELD—

thinks it desirable that an amended and consolidated Act should be passed for the whole of (British) India, and recommends that the provisions of Act IX of 1861 be incorporated. Speaking generally, he considers the following are the main lines upon which the new Act ought to be framed:—

"*First*,—All persons dealing with the property of minors without any certificate obtained from the Civil Court should be left to the general law applicable to persons of their class and to those transactions into which they may have entered. It would be extremely difficult and, to my mind, dangerous to attempt to reduce to propositions in the form of sections of an Act those principles applicable to Hindus, Muhammadans and other classes in India which regulate the power of dealing with property belonging to minors or in which minors have an interest, in the numerous cases in which questions as to the extent of that power may arise. Take, for example, the case of alienations made by the guardians of minors in cases of alleged necessity (see this question discussed in the Privy Council case above referred to—*Doorga Prosad* v. *Kesho Proshad Singh*). The question under what circumstances such alienations are justified has been repeatedly before the Privy Council (see the case of *Hunooman Proshad Panday* v. *Mussamut Dabooi Munraj Koonwari*, 6 Moore's I. Ap. Cases, 393), and has been repeatedly in various forms before the High Courts in India. It would be extremely difficult to formulate in a single proposition or series of propositions the various cases in which alienation on the ground of necessity can be justified or otherwise."

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"*Secondly.*—It should be enacted generally that persons dealing with the estate of an infant and taking the profits thereof are responsible at the suit of the infant suing through a next friend while under age, or in person after attaining majority, such responsibility being determined according to the law applicable under section 24 of the Bengal Civil Courts Act, VI of 1871, and the corresponding provisions in force in other parts of India. 'If a man,' says Mr. Daniell, 'intrudes on the estate of an infant, and takes the profits thereof, he will be treated as a guardian, and held responsible for the same to the infant in a Court of Equity.' (Daniell's Chancery Practice, Vol. II, p. 1204.) In those cases in which a certificate had been obtained under the provisions of the Act the person who obtained such certificate should of course be under the general control of the Court; should be bound to give security, if the Court saw fit to require it, and to render an account. His powers of leasing might be regulated by statutory provisions, while his power of alienation should be subject to the direction of the Court to be obtained in a summary way. In this latter case, his act, so far as third parties were affected, ought to be valid except in cases of fraud or collusion."

259. MR. JUSTICE TOTTENHAM—
agrees with Mr. Justice Field that it is desirable to pass a consolidated Act for the whole of (British) India.

260. THE JUDGES OF THE CALCUTTA HIGH COURT—
(collectively) consider Act XL of 1858 is "in several respects defective; that its language is, in some instances, indistinct; and that legislation is desirable for the purpose of amending the Act, bringing it into more complete accordance with Chapter XXXI of the Civil Procedure Code, and placing the whole law on the subject on a clearer and better defined footing."

They also "concur with the Government of India in thinking that the opportunity might advantageously be taken to consolidate the Acts and Regulations which at present govern the subject in various parts of the country in a single enactment applicable to the whole of British India."

261. SIR R. STUART—
urges that Act XL of 1858 should be left alone.

262. MR. JUSTICE STRAIGHT—
considers it would be highly desirable to consolidate the law relating to minors for the whole of British India in one well-considered and comprehensive Act.

263. MR H. J. SPARKS—
approves of the proposal to consolidate the law for the whole of British India.

264. MR. W. DUTHOIT—
thinks it desirable that the law for the whole of British India should be consolidated if, as appears to be the case, that course is practicable.

[For his suggestions regarding such consolidation, see paragraph 291, *infra*.]

265. MR. JUSTICE SMYTH—
is not aware that any practical difficulty has arisen in the Punjab in the working of Act XL of 1858. The Act is not, however, much used, he says, in that Province.

266. MUHAMMAD LATIF—
agrees that Act XX of 1864 requires amendment.

He is "sure the country will hail with satisfaction and gratitude a consolidated Minors' Act extending over the whole of British India and embodying the provisions of Acts IX of 1861, XXVII of 1860 and IX of 1875, in regard to each of which much uncertainty prevails at present."

267. UMAR BAKHSH—
agrees that Act XX of 1864 requires amendment.

He suggests that the new Act should incorporate Acts IX of 1861 and IX of 1875 (Majority), as well as Act XL of 1858.

268. COLONEL GURDON—
thinks the time has arrived for a general consolidated Act applicable to the whole of British India.

He thinks Umar Bakhsh's suggestion to include Act IX of 1875 (Majority) in the new enactment is worthy of consideration.

269. MR. H. T. RIVAZ—
writes:—

"So far as I know, no serious inconvenience has been felt in the Punjab with reference to the working of Act XL of 1858. The reported cases under the Act are, so far as this province is concerned, few in number, and disclose no particular difficulties experienced in applying the Act; and the result of my experience, so far as it goes, is that the machinery of the Act is very seldom set in motion in this province, and when it is set in motion amply meets the requirements of the case. The proposal therefore to extend the application of the Act and confer wider powers on the Court appears to me, so far as the Punjab is concerned, to be unnecessary."

270. THE FINANCIAL COMMISSIONER OF THE PUNJAB—
writes:—

"The general tendency of the proposed legislation is to make the relation of guardian and minor much more legal than it has hitherto been in the Punjab, and to give occasion to greatly increased resort to the Civil Courts for certificates of administration. The Financial Commissioner thinks that both these changes are neither required nor desirable in the Punjab. The present system works easily, gives little trouble either to the people or the Courts, does not, Colonel Davies believes, give occasion to any large amount of litigation, and appears to be generally acceptable. In many cases it may work as an actual family bond.

"There seems to the Financial Commissioner, therefore, little necessity for fresh legislation, but, if a new enactment be determined upon, it should be merely one declaring and making clear the present practice, and not innovating upon or making it more stringent."

Précis of the Opinions referred to in paragraph 1 of the Statement of Objects and Reasons of the Guardians and Wards Bill.

(General suggestions for the amendment of the Minors' Acts.)

271. THE LIEUTENANT-GOVERNOR OF THE PUNJAB—
writes :—

"The alterations which are suggested by the learned Judges of the Bombay High Court, and discussed in the Resolution under reply, would have a tendency to bring the question of guardianship and minority more under the control of the Civil Courts than is at present the case in the Punjab. * * * It will be seen that the authorities who have been consulted are generally in favour of maintaining the practice which now exists in the Punjab. No difficulty or inconvenience has hitherto been experienced in working the provisions of the existing law, and the Lieutenant-Governor, concurring in the opinions which have been offered, would prefer to leave guardianship, its duties and responsibilities, to be controlled and worked in accordance with custom and public feeling, rather than to bring it under the active interference of the Civil Courts. So long as negotiations regarding the property of minors are conducted in accordance with general principles of equity, there is great advantage in their being carried on out of Court. Sir Charles Aitchison understands that this is practically the view expressed in paragraphs 5, 7 and 8 of the Resolution, and it will be seen that Mr. Justice Smyth and the Government advocate would go even further and would not allow the alienation of the immoveable property of a minor by a certificated guardian to be voided otherwise than reason of bad faith."

272. SARDAR GURDIAL SING—
agrees that Act XX of 1864 requires amendment, though he does not concur in all the amendments proposed by the Judges of the Bombay High Court.

He also thinks Act XL of 1858, stands in need of revision.

He suggests that the new law should consolidate Acts XL of 1858, XX of 1864, IX of 1861, and IX of 1875.

273. MR. R. J. CROSTHWAITE—
considers "the law might with advantage be consolidated in the way proposed by the Government of India."

274. MR. L. NEILL, OFFICIATING COMMISSIONER, NÁGPUR DIVISION,—
writes :—

"The Law [Act XL of 1858] appears to me to work well, and I am not prepared to advocate any change in it.

"With regard to acts done by guardians or representatives of minors, our Courts at present act on the equitable understanding that third parties, who profit by their dealings with minors, shall strictly satisfy themselves that the guardians or representives act *bonâ fide* and with due respect to the minors' interests."

275. MR. BEHARI LAL BASU—
says "Act XL of 1858 is not complete by itself and the reported cases tend to show that the Act needs amendment;" and again, "I am inclined to think the Act needs amendment. It is expedient and desirable that a general consolidated Act be passed for the whole of British India."

276. MR. J. W. CHISHOLM—
writes :—

"I agree in the view that the Act [XL of 1858] is defective, and that amendments should be introduced to remedy defects pointed out which in practice have been found to exist. The best course, as suggested, is to have a general consolidated revised Minors' Act applicable to the whole of British India."

277. LIEUTENANT-COLONEL GRACE—
agrees that the defects pointed out by Mr. Justice Melvill in Act XX of 1864 (and Act XL of 1858) should be amended.

278. THE CHIEF COMMISSIONER OF THE CENTRAL PROVINCES—
approves of the proposal to consolidate the various enactments relating to minors.

279. THE CHIEF COMMISSIONER OF BRITISH BURMA—
says no practical necessity has shown itself in British Burma for any amendment of the law, and that, in fact, the law is very little used there.

280. Mr. J. KNOX WIGHT—
considers it very desirable to pass a consolidated Act remedying defects and bringing the whole law relating to minors within the scope of one enactment. The new Act should, he suggests, embody Act IX of 1861 and the enactments relating to Courts of Wards, as well as other enactments dealing with the subject of the rights and duties of guardian and ward.

281. MR. H. MUSPRATT—
considers it desirable that the existing laws should be re-enacted, with the necessary modifications, in the form of a general consolidated Act applicable to the whole of British India.

282. BABU KAYLAS CHUNDER GHOSE—
remarks :—"The defects pointed out in Act XX of 1864 no doubt require amendment."

General suggestions for the amendment of the Minors' Acts.

283. In the following paragraphs (284 to 297) are noted suggestions of a general kind for the amendment of the law and suggestions which are not referred by their authors to any particular section of any Act, on points not directly connected with the Government of India's proposals.

284. THE HON'BLE MR. O'SULLIVAN—
suggests that "upon the minor attaining majority, the administrator should be entitled to be discharged from his liabilities, acts of fraud, subsequently discovered, being excepted."

285. SIR CHARLES TURNER—
suggests that, in the new Act, the Courts should be given a discretion to appoint more guardians of a minor's property than one, where the circumstances of the case so require.

286. THE GOVERNMENT OF BOMBAY—
submit correspondence dating from 1865 relative to a proposal to amend the Act by constituting the Tálukdári Settlement officer in Gujarát a Court of Wards. It is requested that the Government of India should consider this question in connection with the contemplated legislation.

Précis of the Opinions referred to in paragraph 1 of the Statement of Objects and Reasons of the Guardians and Wards Bill.

(General suggestions for the amendment of the Minors' Acts.)

287. THE BOARD OF REVENUE, LOWER PROVINCES,—
bring to notice the following point which they say has practically hampered the free exercise of a discretion which the law intended to leave to the Court of Wards as to taking properties under charge of the Court, and which they suggest should be cleared up when the new Act is framed:—

"Whether, under the provisions of Act XL of 1858, a Judge has the power to appoint a manager of the property of a minor and a guardian of his person, if the estate of the minor consists in whole or in part of land or any interest in land (as mentioned in the repealed section 12* of the Act), or whether (if the property is not such as to fall within the purview of section 10 of the Act) the Judge has no other alternative than to apply to the Court of Wards to take charge of the person and property of the minor under section 10 of the Bengal Wards Act, 1879; and whether in the event of the Court of Wards refusing to take such charge, the Judge is powerless to make other arrangements for the management of such property."

It is stated that the Legal Remembrancer expressed the following opinion on the point:—

"The last sentence of section 2, Act XL of 1858, placing the property of minors under the protection of the Civil Courts imposes on those Courts the necessity of making provision for the management of that property when properly applied to."

288. MR. JUSTICE FIELD—
brings to notice a case illustrating the difficulty mentioned by the Board of Revenue.

[In regard to a similar difficuly felt under the Madras law, see paragraphs 242 and 249 to 253 of précis.]

289. MR. BIHARI LALL BASU—
suggests that a clear distinction should be made between estates which may be taken up by the Court of Wards and estates for which a guardian may be appointed under the Minors' Act.

290. MR. B. W. COLVIN—
suggests that some provision should be made, as in section 10 of Bengal Act IX of 1879 (Court of Wards), for giving the Court of Wards discretionary powers as to assuming charge of an estate made over to it by the Civil Court.

291. MR. DUTHOIT—
quotes statistics and states certain facts from which he draws the inferences "that hitherto in the North-Western Provinces, Act XL of 1858 has been, comparatively speaking, inoperative, and that neither the personal benevolence of the friends of minors, nor the public benevolence of the district officer, can be trusted to secure for the persons concerned the benefits of the existing law."

He thinks it is desirable that, in the North-Western Provinces and Oudh (of which Provinces alone he writes), greater protection should be to minors than is given by the present law, though he would not go so far in this direction as some of the proposals made by the Judges of the Bombay High Court would tend. The proposals made by Mr. Justice West in his Minute dated 21st August 1881 (Home Department's Judicial Proceedings No. 169 for October 1882) are, he gathers, intended to prevent the hardship arising from litigation, but he shows that the amount of litigation (in the North-Western Provinces and Oudh) is not large. Referring to the remarks of the Government of India in paragraph 7 of its Resolution, he says this litigation is mainly due to a total disregard shown by guardians of the rights of minors who are members of an undivided family, and adds that it is of a very debasing kind. He writes:—

"During the minority of a member of a joint Hindu family the adult coparceners alienate the family property; and when the minor member attains his majority the family combines to oust the alienee on the ground that the alienation was invalid, as made to the prejudice of the minor without legal necessity. What constitutes 'necessity' sufficient to justify the alienation of Hindu family property is a difficult question to decide, and in most cases of this kind the value of the property, or more, is absorbed in the litigation regarding it.

* * The law as it stands does not touch them; for (Mayne's *Hindu Law and Usage*, section 307) the Mitákshara theory of a coparcenary is that all the coparceners are joint owners of the property, but only as members of a corporation in which there are shareholders but no shares; and there is consequently no specific property vested in the minor to which the provisions of Act XL of 1858 can be applied.

He then proceeds to show certain objections, having regard to the Hindu law, to the adoption of Mr. Justice West's proposals (*i*) that, where there is imminent danger of the common property being dissipated, the District Court should be given power on its own motion, or on cause shown, to "take measures for securing the infant's share of it;" and (*ii*) that the Court should be allowed, "even when no such apprehension exists, to provide, when the necessity is obvious, for the minor's nurture and education according to his station in life."

He approves, however, of the principle of Mr. Justice Melvill's proposals (Minute, dated 23rd August, 1881, Home Department's Judicial Proceedings, No. 168 for October, 1882):—

(1) that in the case at least of every considerable estate, and especially when it consists of immoveable property, every administrator should be obliged to show his fitness before he meddles with the property; and
(2) that this object should be effected—
  (*a*) by compelling everyone who requires the assistance of the Court to obtain a certificate, and
  (*b*) by rendering it unsafe for any person to enter into any transaction affecting immoveable property except with a certificated administrator;

except that in clause (1) he would read "in the case of every estate not below Rs. 250 in value,

* Repealed in the Lower Provinces by Bengal Act IX of 1879.

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(General suggestions for the amendment of the Minors' Acts.)

every administrator," &c., and in clause (*b*) he would omit "immoveable."

He does not approve of Mr. Justice West's proposal to oust the Revenue-authorities from jurisdiction under the Minors' Act or of the proposal to bar the interference of the High Court except on a point of law or on a reference made by the District Court, or of the proposal to require proceedings to be initiated in the District Court, and by it delegated to some other Court. Regarding Sir Michael Westropp's suggestion (Minute, dated 19th November, 1881, Home Department's Judicial Proceedings No. 170 for October 1882), to meet the case of the Hindu joint family, he considers it does not require legislation.

He further criticises certain other proposals made in Mr. Justice West's Minute, on points which are not taken up in the Government of India's Resolution.

Mr. Duthoit's own views as to what is required for the protection of minors he describes as follows:

"*First*—We want to make the assistance of the State readily accessible to the public; and not force people, as is done at present, to the expense or trouble of going to the head-quarters of a district for the settlement of a minor's protection, excepting under special circumstances.

"*Secondly*—We want to lead people to apply for certificates, and not to feel the doing so, or the acceptance of the care of a minor's property a burden.

"*Thirdly*—We want, on the one hand, to calm the sensitiveness of the Revenue-authorities as to the danger of being overwhelmed with minor's affairs * * and we want, on the other hand, to engage their sympathies in those affairs, and to obtain from the Revenue-authorities in regard to them such limited assistance as it may be possible for those authorities to give."

For the carrying out of these views he submits the following proposals:—

"I would work up into the new law the provisions of the existing law for curators in cases of succession (Act XIX of 1841), for the care of the persons and property of minors (Act XL of 1858), for the custody of minors (Act IX of 1864), for the Court of Wards (Chapter VI, Act XIX of 1873, and Chapter VIII, Act XVII of 1876), so far at any rate as minors are concerned, and those of the 'European British Minors Act, 1874, the arrangement of which last-named Act I would take as the basis of the arrangement of the new statute.'

"In cases in which European British subjects are concerned, or in which an estate of Rs. 10,000 or upwards is involved, the application for protection of the minor's interests should, I think, be made to the District Court. In all other cases the Munsifs' Courts should, I think, have jurisdiction

* * * * *

"I would extend the provisions of section 4, Act XL of 1858, and would allow the Collector to move the Civil Court in all cases, whether the property does, or does not, consist, wholly or in part, of land or an interest in land.

"I would give to the Civil Courts power to consult the Revenue-authorities as to the fitness of persons proposed as guardians or managers, and as to whether it would, or would not, be advisable that the manager should be a public officer; and I would give to the Local Government power to oust the jurisdiction of the Civil Courts by a declaration in the *Gazette* that it is advisable that the property and person of a particular minor should be cared for by a public officer to be named by it. * * * With the exception noted, I would have all business connected with the protection of minors brought in the first instance into the Civil Courts, and would leave to those Courts discretion as to the mode in which such protection should be afforded, whether through a private person or through a public officer.

* * *

"I would remunerate, by a percentage on the value of the estates protected, all persons, whether private or public—in the latter case Government would take the remuneration and pay the salaries—who might be appointed curators.

"I would have one or more public curators in each district. I would leave the appointment and the superintendence of these officers to the Revenue-authorities. I would make Collectors and Deputy Commissioners Courts of Wards. The present system, under which the Board of Revenue is in the North-Western Provinces the Court of Wards, is, I think, cumbrous and unduly burdensome to the estates placed under it.

"I would leave it to the Court which is possessed of the application to say whether the care of the person and the property of the minor should be vested in a private person, in a public curator or in the Court of Wards. But I would make the orders of the Munsif appealable in this behalf to the District Judge, and I would further give to the Collector power to appeal to the District Judge against a Munsif's order making over an estate of the Court of Wards, and to Government a right of appeal to the High Court from an order of the District Judge to that effect.

"I would levy on each final order passed upon an application for protection an *ad valorem* stamp-duty at somewhat less than the present rate, whether the order be for administration by a private person, by a public curator or by the Court of Wards; but I would remit the duty altogether when the value of the property in respect of which the order is made does not exceed Rs. 1,000.

"I would direct that, except in special circumstances, the reason for finding which should be recorded by the Court, all costs of a successful application should be payable out of the estate."

He continues:—

"I do not think that the labours of district officers would be increased if the scheme I have proposed were adopted. With public curators, and remunerated private persons available for the charge of estates of minors, the duties of the district officer as a Court of Wards would, I think, be so diminished as to more than counterbalance

Précis of the Opinions referred to in paragraph 1 of the Statement of Objects and Reasons of the Guardians and Wards Bill.

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the extra supervisional labour which my scheme would throw upon him.

"The system which I have proposed may possibly be unsuited to the circumstances of other parts of India. If, as is most probable, the varying circumstances of the country require a varying agency for the protection of minors, it will be easy to leave the assignment of such agency to the Local Governments subject to the sanction of the Governor General in Council. But I venture to suggest that the principles of directing the costs of a successful application to be paid out of the estate, and of remunerating all guardians of the property of minors, should find a place in the Act, and that in the assignment of the agency of working the Act, the necessity of bringing its benefits as near to the door of the people as possible should not be lost sight of."

Mr. Duthoit further submits the following suggestions:—

"A.—I would require, to each application made by a private person for the issue of a certificate of guardianship, a declaration of the age of the minor verified as provided by sections 51 and 52 of the Code of Civil Procedure; and I would require a public officer when making an application under the statute to certify that he has made inquiry as to the age of the minor, and that such age has been found to be as stated in the application. The age of a minor is easily ascertained when he is *infans, infanti proximus*, or even *pubertati proximus;* but as 'full age' is approached the difficulty becomes greater, and I have known an instance of great trouble and expense caused by the omission to ascertain the age of the child when the application for an Act XL of 1858 certificate was made, and the consequent doubt as to the time at which the child's minority ceased.

"B.—I would provide that, in default of guardians appointed by testament, the guardians-at-law should, in the absence of special reasons to the contrary, be appointed guardians of the person, and that an order of a subordinate Civil Court setting aside testamentary guardians, whether of the person or property, or guardians-at-law of the person, should require the confirmation of the District Court before it takes effect; and that from an order of a District Court setting aside testamentary or 'natural' guardians of the person an appeal should lie to the High Court.

"C.—I would suggest that advantage be taken of this opportunity to consolidate into one enactment the entire law of *Tutela* and *Curatela;* in other words, that the necessary provisions of Act XXXV of 1858 and of the various Courts of Wards and care-and-custody-of-minors enactments should be gathered up into the new statute.

"D.—And if this be done, I would suggest that the case of spendthrifts should be treated along with that of lunatics, and that, as regards both these classes of persons, use should be made of a family council constituted somewhat in the manner provided by sections 407 to 410 of the French *Code Civil.* It is notorious that the state of the law as regards what are called in this part of India '*dadá potá* cases'—suits by sons or grandsons of the tenor of *Dindyal Lal* v. *Jagdip Narayan Singh*, L. R. 4 I. A., 247—is unsatisfactory; and the aid of the legislature is, I think, greatly needed regarding it. By means of provisions analogous to those of the French Code (sections 513 to 515—the Collector or Deputy Commissioner should take the place of the *tribunal de première instance* in section 492 *et seq.*, and the Commissioner that of the *Cour d'appel* in section 500 *et seq.*), protection might, I think, be afforded to minor members of an undivided Hindu family without shocking the prejudices of the people. The Courts of Wards in the North-Western Provinces and Oudh already (*cf.* section 194, Act XIX of 1873, and section 162, Act XVII of 1876) undertake the protection of estates from the management of which the proprietors apply to be disqualified; and managing members of undivided families (as a father with male issue) are practically treated as proprietors. With the safeguard of a family council, I do not think that there would be political danger in allowing the Government to disqualify a spendthrift, for whose property a curator might thereupon be applied for, and given, under the statute."

292. THE LIEUTENANT-GOVERNOR AND CHIEF COMMISSIONER, NORTH-WESTERN PROVINCES AND OUDH,—

forwards copy of a volume of the Proceedings of the North-Western Provinces and Oudh Government (in file), containing some correspondence which, it is suggested, may be of interest in connection with the proposed amendment of the law.

293. MR. BEHARI LAL BASU—

suggests that "District Court" should be used instead of "Civil Court" throughout the new Act, and the definition in section 29 of Act XL of 1858 removed.

294. MR. H. J. SPARKS—

suggests that some principles might be laid down for the guidance of the Court in appointing a guardian of the person or property, as has been done in section 10 of Act XIII of 1874.

295. UMAR BAKHSH—

suggests that regular suits for the guardianship or custody of minors should be distinctly prohibited, on the ground that if they are allowed the object of the special Minors' Act will be defeated.

296. KHAN AHMED SHAH, EXTRA ASSISTANT COMMISSIONER, HOSHIARPUR,—

submits remarks and recommendations to the following effect for consideration in connection with the amendment of the law:—

It would be next to impossible to insist on every guardian being certificated, both because of the large numbers of minors owning property, and because of the small value of that property in many cases. At the same time, the interests of minors do at present suffer from the dishonesty of guardians by relationship who are uncertificat-

Précis of the Opinions referred to in paragraph 1 of the Statement of Objects and Reasons of the Guardians and Wards Bill.

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ed, and therefore free from control; and as regards other guardians no proper enquiry is made to ascertain whether they are entitled (? fit) to receive certificates.

Recommendations—

(1) Guardians should be compelled to take out certificates in every case where the minor's property exceeds Rs. 3,000 in value or yields an income of more than Rs. 30 per month:

(2) certificated guardians should be required to submit half-yearly accounts to the Court, and the sanction of the Court should be required to certain of their acts, such sanction to have a binding effect:

(3) persons wishing to call in question the acts of certificated guardians should be allowed to examine their accounts as filed in Court, and to submit their complaints to the Court, but should be debarred from bringing suits, as next friends of the minor, against the guardian:

(4) in considering applications for certificates the Court should have regard to the following points:—

1st, nearness of relationship (of the applicant to the minor):
2ndly, the wishes of the deceased parent of the minor:
3rdly, any present or previous connection of the applicant with the property of the minor:
4thly, whether the death of the minor would be beneficial to the guardian (? applicant):

(5) where a minor's property does not exceed Rs. 3,000 in value or does not yield an income of more than Rs. 30 per month, it should be optional with gurdians to take out a certificate or not, and certain restrictions should be placed on the power of all guardians in such cases:

(6) all guardians should be made responsible for the health, maintenance, education and religious instruction of minors under their charge:

(7) the Court should be empowered to remove any guardian on any of the following grounds:—

"(1) using trust *mala fide*;
(2) continued failure to perform his duties;
(3) gross misconduct;
(4) Insolvency:"

(8) the Court empowered to appoint or remove any guardian should be the District Court.

297 SARDAR GURDIAL SINGH—

writes at some length to show that the near relatives of minors in his district usually squander and misappropriate to their own use the income of minors under their care, and that for various reasons the minor refrains from calling the guardian to account on attaining his majority. He also hints that even the persons of minors are not always secure from danger. To check these evils he thinks the Civil Courts should have more extended authority than they at present possess for interfering for the protection of minors, and to that end suggests that [? *inter alia*] the Courts should have a discretionary power to interfere whenever they think proper, instead of being empowered, as at present, to act only when specially moved. He suggests that the law should provide "that the Civil Court may appoint guardians to manage the property of a minor and to take charge of his person whenever—

"(*a*) on its own motion,

"(*b*) on receiving any report or information from any person acquainted with the state of the minor's property or person, or

"(*c*) on the application of any relative or friend of the minor for appointment of a guardian,

"it appears to the Court, after hearing the persons having charge of the minor's person or [? and] property, and after making any further enquiries that may be necessary, to be advisable to do so."

He would require the Court to issue a notice to appear to the persons having charge of the property and person of the minor, and would also, as a further safeguard, make the Court's order appealable.

He further thinks Act XL of 1858 is wanting in clearness in regard to the appointment of guardians of the property on the one hand, and guardians of the person on the other, and suggest that the new Act should contain provisions like the following:—

As regards the appointment of guardians for the management of property:—

"The Court shall have power to appoint any person manager of the property of the minor who in its opinion appears to be fit: Provided that if any person has been nominated a guardian in the will of the last owner of the property, and such will has duly been proved, he shall be appointed a guardian if he accepts the trust, and if the Court does not for any special reason think him to be unfit: Provided also, that preference is to be shown to the friends and *near* relations of the minor, if otherwise fit for the trust.

"In the case of land assessed with land-revenue or the land-revenue of which has been assigned to some one by the Government, the management may be made over to the Collector, who shall be competent to manage it in the manner prescribed by law for the management of property subject to the jurisdiction of Court of Wards; and in the case of moveable or immoveable property other than land assessed with land-revenue, the Public Curator, if there be such an officer in the district, may be appointed guardian."

Précis of the Opinions referred to in paragraph 1 of the Statement of Objects and Reasons of the Guardians and Wards Bill.

(Madras Regulations V of 1804 and X of 1831. Act XIX of 1841. Act XL of 1858, s. 3.)

As regards the appointment of guardians of the person, he would make it a rule that the guardian should be a person of the same class and religion as the minor, and would prohibit the appointment of any person having any interest of his own adverse to that of the minor, or who would be next in succession to the minor, were he dead; and, lastly, would provide that none but a female should be the guardian of a female. With these restrictions, he would give the Courts full discretion.

He would also add a section providing that no person is to be appointed guardian against his will, and that no one is liable to punishment for refusal to act as guardian when required by the Court to do so.

He thinks Act XL of 1858 does not provide sufficiently for the control of guardians. Some guardians certainly might safely be trusted to manage estates without any great control from the Courts; but others would require very close supervision. He accordingly suggests that the Courts should be allowed full discretion in this matter; but would, at the same time, enact provisions to the following effect:—

(1) All guardians of property appointed by the Court should be bound to report before the expiry of three months after the close of each year the *net financial results* of their management, so as to enable the Court in any case in which it suspects anything wrong to set on foot timely enquiries.

This would, he says, afford a great check on fraud, for, the statement being filed in Court, the guardian would not be able to alter it afterwards, or set up anything contrary to it when he is subsequently called upon to render accounts. The guardian need not file complete accounts; a statement of the sort indicated would be quite sufficient to show the Court the result of the administration.

(2) The Court should have power to call upon any guardian—

"(*a*) to file such periodical statements, returns and acounts as it may direct;

"(*b*) to make such reports on any points connected with the management of the estate as it may require;

"(*c*) to carry out such directions as to the management as it may give;

"(*d*) to invest or deposit the surplus or the balance in hand in such place of security (Government Securities, Government Treasury, Government Savings Banks) as it may direct."

He also suggests that provisions to the following effect should be made regarding the duties of guardians of property:—

"That every guardian should—

"(*a*) obey all directions given by the Court under the provisions of the Act;

"(*b*) consult the Court (i) before making any alienation of the minor's property; (ii) before compounding in any suit in which the minor may be a party; (iii) before abandoning any right belonging to the minor; and (iv) on any other important occasion, or on an any difficulty arising in the management; and

"(*c*) report to the Court any severe loss that any portion of the minor's property may have suffered from any cause."

With respect to the duties of guardians for the person, he suggests that the following should be imposed upon them:—

They must—

"(*a*) consult the Court (1) on the arrangements made or to be made for the education of the minor, and (2) regarding matters affecting the marriage of the minor;

"(*b*) report all cases of protracted illness of and accidents to, the minor, and

"(*c*) obey all directions given by the Court regarding the above matters."

He also suggests that guardians of the person should, subject to the general control of the Court, have power to do all acts calculated to advance the well-being of the minor; for instance, acts connected with his education and his proper moral and physical training.

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298. In the following paragraphs (299 to 373) are noted suggestions for the amendment of the law on particular points directly connected with provisions already existing in the Acts and Regulations.

299. As to Madras Regulation V. of 1804, see remarks by Sir Charles Turner in paragraph 253 of précis. *Madras Regulation V of 1804.*

300. As to Madras Regulation X of 1831, see remarks by— *Madras Regulation X of 1831.*

Mr. H. Wigram, in paragraph 242 of précis;

Mr. J. W. Handley, in paragraph 249 of précis;

Mr. P. Srinivassa Rao, in paragraph 250 of précis;

Mr. G. Muttuswamy Chettiar, in paragraph 251 of précis;

the Madras Board of Revenue, paragraph 252 of précis; and

Sir Charles Turner, in paragraph 253 of précis.

301. As to Act XIX of 1841, see remarks by— *Act XIX of 1841.*

Mr. H. Wigram, in paragraph 242 of précis; and

Mr. Duthoit, in paragraph 291 of précis.

302. MR. JUSTICE FIELD— *Act XL of 1858, s. 3 (= Act XX of 1864, s. 2.)*

quotes cases to show that the practice of the Courts has not been uniform as regards the application of the proviso to section 3 of Act XL of 1858. In some cases it has been held that when the Court entertains a suit instituted by a person who has not obtained the permission required by the proviso, the requisite permission is to be deemed to have been given; while in others it has been held that a suit instituted without permission previously obtained is bad to all intents and purposes. Cases are quoted to show that the latter rule is the more correct one, from the point of view of principle.

Précis of the Opinions referred to in paragraph 1 of the Statement of Objects and Reasons of the Guardians and Wards Bill.

(Act XL of 1858, ss. 4-7.)

303. LALLA MADAN GOPAL—

suggests that certain particulars should be prescribed for insertion in all applications; that the Courts should be allowed to act also on their own motion; and that explanations to the following effect should be appended to the section :—

"I. Lapse of years is not a sufficient ground for refusing a certificate [See C. W. R., 343.]

"II. The guardianship of infants who have no property is a matter which forms the subject of Act IX of 1861."

303A. MR. BEHARI LAL BASU—

observes that the word "suit" is not wide enough to include "proceedings and applications."

[In regard to this section, please also see paragraphs 4 to 46 of précis, under "Point I."]

Act XL of 1858, s. 4 (= Act XX of 1864, s. 3.)

304. MR. PLUMBER—

would transfer the powers of the Collector to the amíldár (or tahsíldár) of the taluq in which the land is situated, as in Rule 4 of the Mysore Minors' Rules.

305. MR. JUSTICE FIELD—

writes as follows :—

"There seems no reason why the right to make an application under this section should be limited to a relative or friend. Under the English law, any person may apply in order, says Mr. Daniell, 'that the benefit arising from the protection of the Court may be extended to all cases in which interference is desirable, subject, however, to the risk of incurring the censure of the Court, and of being compelled to pay the costs of the suit, in the event of its subsequently appearing that the proceedings were improperly instituted.' (Chancery Practice, Vol. II, p. 1191)."

306. LALLA MADAN GOPAL—

suggests that the section should be amended as follows :—

Any relative or friend of a minor in respect of whose property such certificate has not been granted *or a certificate holder who wishes to withdraw and desire the appointment of a new guardian, &c., &c.*

307. MR. BEHARI LAL BASU—

considers the phrase "interest in land" objectionable, apparently for the reason that it does not adequately cover the case of members of an undivided Hindu family.

[Please also see suggestion by Mr. Duthoit in paragraph 291, *supra*.]

Act XL of 1858, s. 5 (= Act XX of 1864, s. 4.)

308. THE HON'BLE MR. PAUL—

considers section 5 of Act XL of 1858, defective in not providing for cases where the minor happens to reside in a district in which he has no property.

309. MR. H. J. SPARKS—

suggests that the section should be made more explict, observing that it does not provide for cases in which the minor is residing out of British India.

He also suggests that it might be well to provide for District Delegates, as in Act VI of 1881, to meet cases where, as in Oudh, there is but one District Judge for two or more revenue districts.

310. LALLA MADAN GOPAL—

suggests that "residence" should be explained as meaning the minor's "*usual* dwelling-house, *i.e.*, his paternal family-house."

311. LALLA MADAN GOPAL—

suggests that provision should be made as to the manner of issue of notices and the persons on whom they are to be served, and as to who may oppose the application. He quotes authorities to show that the notice should be served on all parties interested in the application.

312. SARDAR GURDIAL SINGH—

considers it unnecessary that the procedure of the Court should be specially prescribed by the Minors' Act, and that it would be sufficient to enact that the general procedure laid down in the Code of Civil Procedure in force at the time shall apply as far as practicable.

313. MR. BEHARI LAL BASU—

thinks it undesirable, in view to the selection of a good guardian, that the enquiry should be a summary one, as this section requires.

Act XL of 1858, s. 7 (= Act XX of 1864, s. 6.)

314. MR. JUSTICE FIELD—

writes as follows :—

"Under the provisions of section 7 of the Act, if it appears that any person claiming a right to have charge of the property of a minor is entitled to such right by virtue of a will or deed, and is willing to undertake the trust, the Court *shall* grant a certificate of administration to such person. It has been held that in this case it is compulsory upon the Court to grant this certificate (see *Nannee Bibee* v. *Khojah Surwur Hossein*, 7 W. R., 522). It has further been decided that when any such person obtains a certificate of administration, he is not bound to file accounts (see the cases at 6 W.R. Mis. Rul., 53; 7 W.R., 522; 23 W.R., 278). There is no reason why such persons should be exempt from liability to account. According to English law, a testamentary guardian is in all respects subject to the control of the Court, and is liable to account for what he receives (Daniell's Chancery Practice, Vol. II, p. 1205)."

315. THE JUDGES OF THE CALCUTTA HIGH COURT—

(collectively) support Mr. Field's suggestion as to filing accounts.

316. MR. FIELD—

continues :—

"The section then proceeds to enact that if there is no person so entitled, or if such person is unwilling to undertake the trust, and there is any near relative of the minor who is willing and fit to be entrusted with the charge of his property, the Court may grant a certificate to such relative. Here a discretion is vested in the Court. Then the Court may also, if it think fit (unless a guardian have been appointed by the father), appoint such person as aforesaid to be guardian of the person of the minor. The exception assumes a

Précis of the Opinions referred to in paragraph 1 of the Statement of Objects and Reasons of the Guardians and Wards Bill.

(Act XL of 1858, ss. 8-10.)

power in the father to appoint a guardian by will. The existence of this power as regards persons to whom the Act applies, that is, minors not being European British subjects, may be doubtful. It may be observed, as in England, that the power of appointing a testamentary guardian was conferred by Statute (12 Car. II, cap. 24), and as by the law of England no will made by any person under the age of 21 years is valid, it follows that a father while under that age, cannot now by will dispose of the custody of his children. Then in the case of a guardian appointed by the father, it would appear that the Court has no power to remove such guardian. The last clause of section 21 provides that 'the Court may also, for any sufficient cause, remove any guardian *appointed by the Court*,' thus indicating that the Court has no power to remove a guardian appointed by the father. Under the law of England, a testamentary guardian is subject to the control of the Court, both with respect to the property and the person of the infant, and the Court may remove him and appoint another guardian in his stead, or may without removing him appoint another person to have the care of the infant (Chancery Practice, Vol. II, p. 1194). It is obvious that there may be cases in which it is very desirable that the Civil Court should have the power of removing a testamentary guardian."

317. THE JUDGES OF THE CALCUTTA HIGH COURT—

(collectively) support Mr. Field's suggestion as to taking power to remove a guardian appointed by the father.

318. MR. JUSTICE TOTTENHAM—

writes as follows:—

"I would make it clear that, in cases of rival claims to a certificate, preference should not necessarily be given to any one claimant on the mere ground of nearness of kin to the minor, or on the ground of sex. The nearest of kin may often be the person to whom, for other reasons, it may be most objectionable to grant a certificate.

"I would also preclude the Court from entertaining any application for a certificate unless satisfied that property needing protection is actually in possession of the minor or of some person on his or her behalf. I remember a case in which the only property was in the possession of adversaries, and the object of the application was to try to induce the Court to direct the Collector to take charge of the estate, which was said to be interest in land, in order that that officer might undertake a troublesome and costly lawsuit to recover possession for the minor."

319. LALLA MADAN GOPAL—

says that by Hindu law the duty of providing for the care of the persons and property of minors devolves on the Sovereign, while by Muhammadan law certain classes of relations have a prior right. This being the case, he thinks the inclusion of the rights of guardianship and minority in section 5 of Act IV of 1872 (the Punjab Laws Act) was a mistake; also, that it is surprising, in view of that enactment, to find Schedule I of that Act declaring Act XL of 1858 to be in force in the Punjab.

He submits a list showing classes of persons whom he thinks the Courts should be prevented apparently, by express declaration) from appointing as guardians.

Further on, he suggests that section 27 of the Act should be embodied as an explanation in section 7; also, that the Courts should be allowed discretion to refuse to grant a certificate to an unfit person appointed by will, and an explanation inserted declaring that fitness should be allowed more weight than mere nearness of relationship.

320. UMAR BAKHSH—

suggests that the Court should be empowered to reject an unfit person appointed by will or deed.

Further:—

"The words 'near relative' in the same section are rather vague, and further it is not clear whether the scope of the section is to select the fittest person from among the relatives of different or equal degrees, or to appoint the nearest person fit for the post. I think it should be expressly provided that brother of the whole blood and uncle should have prior right to the guardianship of a minor, unless they are unfit; but in the case of distant relatives the Court should have full discretion of selecting the fittest person, disregarding the nearness of relationship."

He also suggests that where a minor has considerable property the Court should have power to appoint more than one person to administer the estate, if that should be deemed necessary in the interests of the minor.

[Please also see suggestions by—

Khan Ahmad Shah, in paragraph 296 of précis; and

Sardar Gurdial Singh, in paragraph 297 of précis.]

321. LALLA MADAN GOPAL— *Act XL of 1858, s. 8 (= Act XX of 1864, s. 7.)*

suggests an addition to section 8 of Act XL of 1858 to the following effect:—

"The Court will not adjudicate merely on the Collector's report [see 22 W.R., 490], but must satisfy itself as to the applicant's fitness on legal evidence" [see 9 W. R., 555].

322. SARDAR GURDIAL SINGH—

"would give the Court power to enquire into the character of any person, and to call for reports from any Revenue-officer, Magistrate or Police-officer in the district."

[Please also see suggestions by Mr. Duthoit in paragraph 291 of précis.]

323. SIR CHARLES TURNER— *Act XL of 1858, s. 10 (= Act of XX 1864, s. 9.)*

referring to section 9 of Act XX of 1864 recurs to a suggestion recently made by the Madras High Court that there should be appointed in every district a public officer to take charge of private trusts under the superintendence of the Official Trustee. If this proposal be accepted, the Courts might, he suggests, be enabled to appoint such officers, and in any case the Official Trustee, to be manager of the property of a minor.

Précis of the opinions referred to in paragraph 1 of the Statement of Objects and Reasons of the Guardians and Wards Bill.

(Act XL of 1858, ss. 11-17.)

He considers that considerable relief would be afforded to Revenue-officers by the creation of the proposed offices, and that a commission, not exceeding 5 per cent., would probably provide sufficient salaries and meet the costs of establishment.

324. LALLA MADAN GOPAL—

suggests, with reference to Mr. Justice Melvill's criticism on section 9 of Act XX of 1864 in his Minute of 23rd August 1881, that the words "or the like" mean "immoveable property (other than village-land assessed with revenue, for which provision is made by placing it in charge of the Collector), such as shops, katrás, warehouses, &c."

325. SARDAR GURDIAL SINGH—

thinks the words "moveable property or houses, gardens or the like" were intended to mean (*1*) moveable property, and (*2*) immoveable property other than land, of which the Collector could be asked to take over the management.

326. THE HON'BLE MR. PAUL—

referring to Mr. Justice Melvill's criticisms on sections 9 and 11 of Act XX of 1864 in his Minute of the 23rd August 1881, observes that "the distinction between 'houses, gardens and the like' and 'land or any interest in land' is probably that between revenue-paying immoveable property and that which does not pay revenue, including in the category of revenue-paying property such as may be *lákhiráj* by reason of exemption."

Act XL of 1858, s. 11 (=Act XX of 1864, s. 10.)

327. SARDAR GURDIAL SINGH—

suggests that a limit should be put to the guardian's allowance; that, to encourage economy in administration, it should be calculated on net profits, and not on income; and that it should be fixed at 20 per cent. His reason for selecting so high a rate is that the remuneration would be small on small estates.

328. LALLA MADAN GOPAL—

observes, with reference to Mr. Justice Melvill's remarks on the word "aforesaid" in section 10 of Act XX of 1864 (see Home Department Judicial Proceedings, No. 168 for October 1882), that in the Bengal Act, section 11, it clearly refers to section 10 of that Act and is not open to any misconstruction.

329. LALLA MOHAN LALL AMD MIÁN ASDULLA—

referring Mr. Justice Melvill's criticism, say they think the provision in section 10 of Act XX of 1864 excluding legal heirs and persons next in succession from the guardianship of the person of a minor, which does not occur in the Bengal Act, ought to be embodied in the new Act.

330. SARDAR GURDIAL SINGH—

is of the same opinion.

[Please also see suggestions by Mr. Duthoit in paragraph 291, *supra* (on pages 100 and 101).]

Act XL of 1858, s. 12 (=Act XX of 1864, s. 11.)

331. MR. H. J. SPARKS—

suggests that provision should be made—

(1) for cases in which only a small part of the property consists of land, and

(2) for cases in which the land is situated in more than one district.

332. BABU KOYLAS CHUNDER GHOSE—

suggests that provision should be made enabling the Collector to give up charge of an estate taken over by him under this section, when it would be for the benefit of the minor to do so.

Act XL of 1858, s. 16 (=Act XX of 1864, s. 16.)

333. MR. PLUMER—

suggests that a half-yearly statement of account should be prescribed, as in Rule 15 of the Minors' Rules framed for Mysore, instead of the annual statement provided for by Act XX of 1864.

334. THE HON'BLE MR. O'SULLIVAN—

makes the following suggestions:—

"The administrator of the property should be required to file annual accounts of receipts and disbursements, and they should be open to inspection by any relative or friend of the minor, who should be at liberty to bring to the notice of the Court, by way of petition, any neglect, default or misfeasance of the administrator."

335. LALLA MADAN GOPAL—

suggests that the obligation to render accounts should be extended to all guardians and administrators.

336. LALLA MOHUN LALL AND MIA'N ASDULLA—

urge that the provisions of sections 16 and 17 should be extended to all guardians and administrators, arguing that it may be very necessary to provide against fraud or waste by those to whom the sections do not at present apply.

337. MR. BEHARI LAL BASU—

suggests that section 16 should be extended to all guardians; also that any friend or well-wisher of the minor should be allowed access to their accounts.

[Please also see suggestions by—

Mr. Justice Field, in paragraphs 258 and 314 of précis;

The Judges of the Calcutta High Court, in paragraph 315 of précis;

Khan Ahmad Shah, in paragraph 296 of précis; and

Sardar Gurdial Singh, in paragraph 297 of précis.]

Act XL of 1858, s. 17 (=Act XX of 1864, s. 17.)

338. MR. PLUMER—

suggests that for section 17 of Act XX of 1864 should be substituted Rule 16 of the Minors' Rules framed for Mysore, which requires that surplus funds shall be deposited in the District Treasury and invested *by the Court* in public securities.

Précis of the opinions referred to in paragraph 1 of the Statement of Objects and Reasons of the Guardians and Wards Bill.

(Act XL of 1858, ss. 18-21.)

339. LALLA MADAN GOPAL—

writes:—

"'Public securities' denotes Government promissory notes. I would suggest that this limitation be removed, and that it may be left to the discretion of the Court to lay out the surplus in any profitable manner that is suggested to it by the administrator, *e.g.*, in mortgaging landed property or purchasing debentures or bank shares."

340. BABU KOYLAS CHUNDER GHOSE—

considers it desirable to impose a penalty for the enforcement of the provisions of this section which are, he says, seldom observed.

[Please also see suggestions by—

Sardar Gurdial Singh, in paragraph 297 of précis; and

Lalla Mohun Lall and Mián Asdulla, in paragraph 336 of précis.]

Act XL of 1858, s. 18 (=Act XX of 1864, s. 18.)

341. MR. JUSTICE FIELD—

says it has been decided that when an application for leave to deal with the property of an infant is made under the second clause of section 18 of Act XL of 1858, the Civil Court is bound to determine the question whether the proposed mode of dealing with it would, if sanctioned, be for the benefit of such infant, and that the petition should contain all the materials reasonably required to enable the Court to decide this question. He gives a reference to *In re Srish Chunder Mukhapadhya*, I.L.R. 6 Cal., 161; S.C. 5 Cal. L.R., 501; and *Sikher Chund* v. *Dulputty Singh*, I.L.R. 5 Cal., 363, and suggests that the substance of those decisions might well be incorporated in the proposed new Act.

He further remarks upon this clause as follows, as to the effect of neglecting to obtain the sanction of the Court:—

"Where a guardian has obtained a certificate of administration under the Act, it has generally been held that any sale of the minor's property for which the Act requires the sanction of the Civil Court, if made without such sanction, is invalid and conveys no title (see the cases of *Surul Chunder* v. *Raj Kishen Mukherji*, 15 B.L.R., 350, S.C., 24 W.R., 46; *Paran Chunder Pal* v. *Kuroona Moyi Dasi*, 7 B.L.R., 90; *Dabi Dutt Sahoo* v. *Subhodra Bibee*, I.L.R. 2 Cal., 283; *Buchraj Ram* v. *Ram Kissen Singh*, 11 C.L.R., 345). In *Manjiram* v. *Tara Singh* (I.L.R. 3 All., 852) it was decided that a minor could not ratify such a transaction. See to the contrary *Til Koer* v. *Roy Anund Kishore*, 10 C.L.R., 547, where a mortgage by a certificated guardian, although made without the saction of the Court, was upheld the transaction being, under the circumstances, considered a proper one."

342. LALLA MADAN GOPAL—

quotes conflicting decisions on the question whether this section applies to non-certificated guardians.

343. BABU KOYLAS CHUNDER GHOSE—

writes:—

"The law, as it stands at present, contains no directions as to how the Court should proceed when an application for sanction is presented. Generally the sanction is given on the representations of the administrator, but this is not always safe. The administrator, where he makes an application of the kind, should be required to prove the necessity for the sale, &c., by affidavit or otherwise, and the assertions contained in his affidavit should be tested by some officer of the Court before the Court accords its sanction to the sale, &c."

[In regard to this section, please also see paragraphs 104 to 138, under "Point IV," paragraphs 148 to 183, under "Point VI," and paragraphs 184 to 201, under "Point VII."]

Act XL of 1858, s. 19 (=Act XX of 1864, s. 14.)

344. LALLA MADAN GOPAL—

approves of Mr. Justice Melvill's suggestions on this section (see Home Department's Judicial Proceedings, No. 168 for October 1882, at foot of page 24).

Act XL of 1858, s. 21 (=Act XX of 1864, s. 21.)

345. MR. JUSTICE FIELD—

writes:—

"In connection with section 21 of the Act, it will be useful to consider the decision of the Full Bench in the case of *Nannee Bibee* v. *Khojah Surwar Hossein*, 7 W.R., 522. It was here decided that a certificate granted under section 7 of the Act may be recalled summarily under the provisions of section 21, and this without any action having been previously taken in a regular suit under the provisions of section 19 of the Act."

(Please also see his remarks and those of the Calcutta High Court in paragraphs 316 and 317 of précis, as to taking power to remove a guardian appointed by the father.)

346. LALLA MADAN GOPAL—

suggests that to meet Mr. Justice Melvill's objection as to the vagueness of the words "or any other person, as the case may be" (see Home Department's Judicial Proceedings, No. 168 for October 1882, at foot of page 24) in section 21 of Act XX of 1864, the words "*or other fit person* within *the meaning of* sections 24 *and* 10" should be substituted for them (in the Bengal Act).

He further suggests that illustrations should be inserted to the following effect:—

"*Illustration I.*—The Court cannot summarily remove a guardian who has not obtained a certificate. This should be done by a regular suit (see II W. R., 370).

"*Illustration II.*—The grounds set forth in the preceding portion as to the disqualifications of a guardian should be held sufficient for removal.

"*Illustration III.*—Danger to the estate or welfare of the minor should also be held sufficient.

"*Illustration IV.*—Where the conduct of the guardian, though blameworthy, is not culpably bad, the Court will pass orders to regulate his conduct before removing him."

Précis of the Opinions referred to in paragraph 1 of the Statement of Objects and Reasons of the Guardians and Wards Bill.

(Act XL of 1858, ss. 23-27. Act IX of 1875.)

347.—SARDAR GURDIAL SINGH—

would specify the three following reasons as justifying removal of a guardian [? or recall of a certificate]:—

"(1) If he has wilfully neglected to perfrom any of the duties imposed upon him by law;

"(2) if he has been guilty of any other misconduct which, in the opinion of the Court, makes him unfit for the work; and

"(3) if has formed a collusion with persons having interests adverse to those of the minor, or who are enemies of the minor."

He would further allow any of the minor's friends or relations to apply to the Court for the removal of the guardian on any of these grounds; and would provide that if, after examining such applicant, the Court sees reason to do so, it may make an enquiry, and, if the matters set forth in the application are established, may award the applicant his costs out of the minor's estate. He adds: "Of course the Court should have power to punish a wilful neglect, and power to have its orders carried out."

[Please also see suggestion by Khan Ahmad Shah in paragraph 296 of précis.]

Act XL of 1858, s. 23 (=Act XX of 1864, s. 23.)

348. LALLA MADAN GOPAL—

suggests that an explanation should be added to the following effect:—

"*Explanation.*—The successor will be appointed in the same way as the first man was appointed, *i. e.*, after issue of notice and enquiry."

Act XL of 1858, s. 25 (=Act XX of 1864, s. 25.)

349.—SARDAR GURDIAL SINGH—

thinks provision should be made for the education of female as well as male minors.

[Please also see suggestion by Khan Ahmad Shah in paragraph 296 of précis.]

Act XL of 1858, s. 26 (=Act XX of 1864, s. 30), and Act IX of 1875.

350. MR. BARCLAY—

suggests that the new Act should define the word "minor."

351. LALLA MADAN GOPAL—

writes at some length to show the desirability of enacting a more suitable definition of "minor." He refers to the different laws prevailing on this point in India, and to conflicting decisions as to the meaning of the definition given in section 26 of Act XL of 1858. He suggests that "minor" should be declared to mean any person (excepting, apparently, Europeans whose personal law fixes their majority at 21) who has not completed the age of eighteen years. The objections to the present definition which he specially mentions are—

(1) that it does not conclusively show whether it applies to minors regarding whom no action has been taken under the Act; and

(2) that it provides for the Mufassal a different law than that prevailing in the Presidency-towns.

In order to meet the latter objection, he urges that the new Act ought to be made applicable to the Presidency-towns as well as to the Mufassal.

352. UMAR BAKHSH—

invites attention to the rules in paragraphs 1 and 2 of section 3 of Act IX. of 1875, and their effect where certificates of administration are granted under Act XL of 1858, but makes no specific suggestion for the amendment of the law.

353. SARDAR GURDIAL SINGH—

considers there can be no objection to the varying rules as to majority prescribed by Act XL of 1858, section 26, and Act IX of 1875.

354. MR. BEHARI LAL BASU—

referring to Act IX of 1875 and other laws, statutory and "personal," suggests that it would save much confusion if one uniform age were fixed by statute for the attainment of majority; the age so fixed being made applicable to all persons and in all places throughout British India.

355. MR. J. KNOX WIGHT—

suggests that the definition of "minor" given in Act IX of 1875 should be incorporated in the proposed consolidated Act.

Act XL of 1858, s. 27 (=Act XX of 1864, s. 31.)

356. MR. JUSTICE FIELD—

invites attention to the case of *Fasihan* v. *Kajo*, I.L.R. 10 Cal., 15, in which it was held that the effect of section 21 of Regulation X of 1793, and section 27 of Act XL. of 1858, is that no person other than a female shall in any case be entrusted with the guardianship of a female minor.

357. SARDAR GURDIAL SINGH—

thinks section 27 of Act XL of 1858 is intended to refer to the guardianship of the property as well as of the person of minors. He suggests that it should be amended so as to provide that no guardian shall be appointed for the person of a female minor if she be married and her husband be not a minor, provided she takes up her abode with the family of her husband; but that a guardian for her property, if any, may be appointed, unless her husband undertakes the management of it.

He also suggests that to the clause prohibiting the appointment of a guardian (either of person or property) for a minor whose father is living and is not a minor, should be added a proviso that the father is not otherwise unfit to manage his affairs, for instance, by reason of lunacy, idiocy, renunciation of worldly affairs, &c.

(Please also see his suggestion in paragraph 297 of précis.)

[Please also see suggestion by Lalla Madan Gopal in paragraph 319 of précis.]

Précis of the Opinions referred to in paragraph 1 of the Statement of Objects and Reasons of the Guardians and Wards Bill.

(Act XL of 1858, s. 28. Act IX of 1861. Act XX of 1864, ss. 12 and 26. Act IX of 1875. Civil Procedure Code, Chapter XXXI.)

Act XL of 1858, s. 28 (= Act XX of 1864, s. 33.)

358. MR. JUSTICE FIELD—

suggests that the question as to what orders made under the Act are appealable or not appealable should be clearly settled. He invites attention to the conflict of decision between the cases reported in 15 W. R., 492 and 22 W. R., 479.

359. LALLA MADAN GOPAL—

suggests that an explanation should be added to the effect that every person who appeared in the original proceeding would have a right of appeal. This has, he says, become necessary in consequence of a ruling, at page 256 of the 13th Volume of Sutherland's Weekly Reporter. He does not think the right of appeal should be taken away, as suggested by Mr. Justice West (see Home Department's Judicial Proceedings, No. 169 for October 1882); remarking that it is a great privilege and protection, and that there does not appear to be any weighty reason for its abrogation.

360 SARDAR GURDIAL SINGH—

would, in order to prevent needless litigation, provide that there shall be no appeal from the orders of the Courts excepting "orders of importance, to be specially mentioned," and that there shall be no second appeal in any case.

[Please also see suggestions by Mr. Duthoit in paragraph 291 of précis.]

Act IX of 1861.

361. As to Act IX of 1861, see remarks by—

Mr. H Wigram, in paragraph 242 of précis; and

Sir Charles Turner, in paragraph 253 of précis.

Act XX of 1864, s. 12.

362. THE HON'BLE MR. O'SULLIVAN, THE HON'BLE MR. PAUL AND MR. JUSTICE FIELD—

suggest that in the new Act the Court should be empowered to require security from guardians for their dealings with minors' estates, Mr. Field quoting the English practice in support of the suggestion.

363. MR. JUSTICE OLDFIELD—

suggests that provisions should be inserted in the new Act, similar to those in sections 78 and 79 of Act V of 1881, for taking bonds for the proper administration of the estate, and for the assignment of such bonds to enable fit persons to sue upon them.

364. THE LIEUTENANT-GOVERNOR AND CHIEF COMMISSIONER OF THE NORTH-WESTERN PROVINCES AND OUDH—

See his remarks on Mr. Justice Oldfield's suggestion, in paragraph 162 of précis.

365. MR. JUSTICE STRAIGHT—

concurs in Mr. Justice Oldfield's suggestion except as regards guardians appointed in right of will or deed.

366. Mr. DUTHOIT—

considers the absence of a provision regarding the taking of security from administrators is one of the most striking defects in the existing law. He doubts whether security could be insisted on if remuneration be not given to the guardian; but if guardians of the property are remunerated, as he trusts they may be (see paragraph 291 of précis), there would, he believes, be no difficulty in obtaining security from them. Security should, he thinks, be required in all cases in which the value of the estate exceeds Rs. 250.

367. BABU KOYLAS CHUNDER GHOSE—

suggests that, as a check upon guardians, security should be required from them in every case.

[See also remarks by Mr. E. Barclay in paragraph 152 of précis.]

Act XX of 1864, s. 26.

368. THE GOVERNMENT OF BOMBAY—

forward for consideration in connection with the proposed legislation certain papers showing the desirability of making provision to admit of minors being sent to schools or colleges recognized by the Local Government for the purpose, though situated "beyond the limits of the Presidency." What is desired appears from the papers to be to take power to send a minor to the college in Kolhápur (a Native State).

Act IX of 1875.

369. As to Act IX of 1875, see remarks in paragraphs 350 to 355 of précis.

Code of Civil Procedure, Chapter XXXI.

370. MR. WIGRAM—

writes:—

"The provisions of Chapter XXXI of the Civil Procedure Code appear to me unnecessarily complex, and I do not understand on what principle a mother, if a co-defendant, is prevented from representing her minor son (section 445).

"All that is really required in a Procedure Code is to provide *that* suits by and against minors shall be brought and defended in the minor's name by a guardian *ad litem* appointed by the Court and removable by the Court; *that* no appeal shall lie from the appointment of a guardian *ad litem*; *that* the guardian *ad litem* shall give a written undertaking to be responsible for costs; *that* he shall not enter into any compromise of a suit without the leave of the Court; and *that* before taking out execution of any decree he shall give security to the Court that he will account to the minor for the proceeds of the decree.

371. SIR CHARLES TURNER—

says that great difficulty is felt in securing the proper representation of minors when creditors take proceedings against their property as representing the effects of deceased debtors. The person who would by law be entitled to the guardianship may refuse to act, and no relative or friend may be found who is willing to do so, while the Court may not think it its duty to aid the creditor by appointing a guardian *ad litem*, although the probable consequence of its not doing so would be to increase the debt by allowing interest to accumulate. Moreover, when the Court is constrained to appoint a stranger to act as guardian *ad litem*, no power is given by the Civil Procedure Code to make provision for the

Précis of the Opinions referred to in paragraph 1 of the Statement of Objects and Reasons of the Guardians and Wards Bill.

(The Hindu Joint Family System.)

costs of securing for the person appointed the means of obtaining professional assistance and defending the suit. In the Madras High Court the following course has been pursued:—

"If no relative or friend is found, who is willing to appear as guardian *ad litem*, the Court will, on the application of the plaintiff, appoint an officer of the Court guardian *ad litem*, on the condition that the plaintiff undertakes to provide the officer so appointed with funds reasonably sufficient to enable him to defend the suit. If the plaintiff fails to provide funds, the order for the appointment is discharged. If, on the other hand, the funds are found and the plaintiff eventually succeeds, he would be allowed to receive the money as part of his costs in the cause." He adds: "But generally, if not in all cases, when the order has been made, a person who would by law be entitled to the guardianship or to whom the Court would have committed the guardianship comes forward and applies that the order appointing an officer of the Court may be discharged and the applicant appointed."

Sir Charles Turner suggests that some provisions of this nature should be introduced into the Civil Procedure Code for the guidance of the Courts.

He further suggests that it would be desirable to declare that on an application for leave to sue on behalf of a minor *in formâ pauperis* the Court is to have regard to the circumstances of the minor and not of the next friend. The law has been so interpreted by the High Court, but is not, he says, generally understood.

And he expresses a doubt as to whether the "local laws" referred to in section 464 of the Code include the Minors' Act, IX. of 1861, which is a "general" Act.

372. MR. JUSTICE WEST—

suggests that, in order to check a practice by which, for the purpose of harassing people interested in a minor, a pauper next friend is put forward to institute a suit against those having charge of his property, a discretion should be allowed to the Courts to require security for costs from pauper next friends.

He further says it is doubtful at present whether the next friend is to be regarded as a principal in the litigation, or whether the infant is the principal, and suggests that this point should be made clear, observing that the case of an infant who is principal with a pauper next friend is common, while a pauper infant with a next friend of competent means is not uncommon.

373. THE HON'BLE MR. PAUL—

suggests that, in order to put a stop to vexatious, frivolous and other improper litigation, the next friend should, in certain classes of cases, be required to satisfy the Court that the suit will be really and not merely technically for the benefit of the minor, and that the Court should see that its orders are for the minor's benefit, in the same way as in the English Courts of Equity.

[In regard to this chapter, please also see paragraphs 47 to 69, under "Point II," and paragraphs 139 to 147, under "Point V."]

[See also remarks by—

Mr. E. Barclay, in paragraph 7 of précis;
Mr. Justice Field, in paragraph 16 of précis;
Mr. Justice Oldfield, in paragraph 19 of précis;
Mr. Justice Straight, in paragraph 20 of précis;
Mr. H. T. Rivaz, in paragraph 32 of précis;

the Chief Commissioner of the Central Provinces, in paragraph 39 of précis;

the Resident at Hyderabad, in paragraph 46 of précis; and

Khan Ahmad Shah, in paragraph 296 of précis.]

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374. In the following paragraphs (375 to 386) are noted remarks regarding the Hindu joint family system, and the application of the Minors' Acts to it. *The Hindu Joint Family System.*

375. MR. WIGRAM—

is averse to any legislation which would render it compulsory on the Civil Courts to interfere in the case of all minor members of an undivided family; but at the same time he thinks occasions do arise when such interference is necessary, and he quotes a case showing this.

He suggests that "the District Court should have power to direct that a suitable provision be made for the maintenance and education of minor members of an undivided family whenever occasion arises for its interference."

(Please also see his suggestions in paragraphs 107 and 242 of précis.)

376. THE HON'BLE MR. O'SULLIVAN—

writes:—

"The managing male member of an undivided Hindu family subject to the law of the Mitakshara should not be required to take out a certificate in respect of the undivided share of a minor member of the family; but in case of malversation or mismanagement by the managing member a suit on behalf of the minor for a partition and delivery of his share should be permitted, as is the case at present; and, when the partition is effected, a certificate of administration should be granted for the share of the minor."

377. MR. JUSTICE WEST—

says the law with regard to Hindu minors, members of joint families, as hitherto conceived by the Courts in India, has recently been quite differently expounded by a judgment of the Judicial Committee of the Privy Council (*Doorga Persad* v. *Kesho Persad Singh*, L. R., 9 I. A., at page 30). He shows that that judgment will upset the existing state of things, by introducing a new limitation on the powers of fathers and other guardians who are really in the position of co-owners and are not mere guardians in the restricted sense. He suggests that this matter

Précis of Opinions referred to in paragraph 1 of the Statement of Objects and Reasons of the Guardians and Wards Bill.

(The Hindu Joint Family System.)

should be taken up promptly, and that guardians of this kind should be allowed to defend suits against minors without a certificate.

378. SIR CHARLES SARGENT—

thinks that in the case of the Hindu joint family the only satisfactory course would be to distinguish between family and separate property. In regard to the former, he suggests that until a case of fraud or abuse of powers is brought to the notice of the Court by regular suit, the charge of the minor's interest should be left to such persons as would be entrusted with it according to Hindu law and usage. In regard to the latter, please see his remarks in paragraph 223, *supra*.

379. MR. JUSTICE MELVILL—

concurs with Sir Charles Sargent on this question, and explains that he did not intend by his Minute of August 1881, to recommend that the manager of a joint Hindu family should be compelled to take out a certificate of administration of the share of a minor co-parcener.

380. THE HON'BLE MR. PAUL—

says the adoption of the proposal noted as Point I (see *supra*) would be very inconvenient in the case of a Hindu joint family, as the introduction of a guardian from outside would cause discord and probably waste on the part of other members of the family.

(Please also see his remarks in paragraph 255, *supra*.)

381. MR. JUSTICE FIELD—

quotes cases showing the final decision of the Calcutta High Court and the decision of the North-Western Provinces High Court to be that Act XL of 1858 does not alter or affect any provision of Hindu or Muhammadan law as to guardians who do not avail themselves of that Act.

He suggests that the effect on those decisions, and also on the cases quoted by Sir Michael Westropp in his Minute of 19th November 1881, (Home Department's Judicial Proceedings, No. 170 for October 1882), of the Privy Council case quoted by Mr. Justice West (see paragraph 377, above) should be considered.

(Please also see his suggestions in paragraph 258, *supra*.)

382. MR. JUSTICE TOTTENHAM—

thinks it would be inconvenient that, where the minor's estate consists of a share in joint undivided family property managed by a *kurta*, any other person should be allowed to obtain a certificate.

383. THE JUDGES OF THE CALCUTTA HIGH COURT—

(collectively) suggest "that provision should be made by which, on due cause shown, the new Act might be employed for the protection of a minor member of an undivided Hindu family against the fraud or extravagance of the co-parceners, a course which, as pointed out by Sir Michael Westropp (see his Minute dated November 1881, Home Department's Judicial Proceedings, No. 170 for October 1882), it has been held by the Courts, cannot be adopted under the existing law."

[Please also see their remarks in paragraph 80, *supra*.]

384. SIR R. STUART—

strongly approves of the doctrine expounded in the case of *Heit Singh and another* v. *Thakur Singh and others*, High Court Reports, North-Western Provinces, 1872, page 57, that "section 2, Act XL of 1858, does not preclude the natural and legal guardian of a Hindu minor from dealing with his property within the limits allowed by the Hindu law without having acquired a certificate of administration from the Civil Court;" and trusts that the application of this doctrine in the future will not be interfered with by any legislation on the part of the Government of India.

385. LALLA MADAN GOPAL—

thinks it very desirable in the interests of minor members of Hindu joint families that the existing rulings declaring that no application for appointment of an administrator can be made in their case under section 3 of Act XL of 1858 should be disregarded and words introduced to admit of applications being made in such cases. He says that, in spite of these rulings, such applications are sometimes admitted even now. He urges that it would be easy to fix the minor's share, and that there need be no hardship, as the manager under the Hindu law would usually be the person to whom the certificate would be granted.

386. SARDAR GURDIAL SINGH—

thinks it would be necessary in some cases that the Court should have power to appoint a guardian where a minor has merely a joint interest with others, and he would definitely give the Courts discretion to move in such cases whenever they think it proper to do so.

[For further references to the Hindu joint family system, please see remarks by—

Mr. E. Barclay, in paragraphs 7 and 219 of précis;

Mr. Hutchins, in paragraph 71 of précis;

Sir Charles Turner, in paragraphs 77, 221 and 253 of précis;

Mr. T. T. Allen, in paragraph 79 of précis;

Mr. Duthoit, in paragraphs 84 and 291 of précis;

Mr. R. J. Crosthwaite, in paragraph 91 of précis;

Mr. Behari Lal Basu, in paragraphs 92 and 307 of précis;

the Chief Commissioner of the Central Provinces, in paragraph 94 of précis; and.

Mr. G. Muthaswamy Chettiar, in paragraph 251 of précis.]

Précis of the opinions referred to in paragraph 1 of the Statement of Objects and Reasons of the Guardians and Wards Bill.

(General Observations.)

General Observations.

387. MR. R. RY. A. L. V. RAMANA PUNTULU GARU, SUBORDINATE JUDGE, MADURA—

agrees with the views expressed by Mr. Justice West in his Minute dated 21st August 1881 (Home Department's Judicial Proceedings, No. 169 for October 1882), as to the direction which legislation should take.

388. THE GOVERNMENT OF MADRAS—

concur in the remarks submitted by Mr. Hutchins.

389. THE PUISNE JUDGES OF THE MADRAS HIGH COURT—

concur in the remarks submitted by Sir Charles Turner.

390. THE GOVERNMENT OF BOMBAY—

"do not desire to add any further observations" to those made in the Minutes by the Judges of the Bombay High Court.

391. MR. JUSTICE TOTTENHAM—

agrees generally in Mr. Justice Field's recommendations.

392. MR. JUSTICE TYRRELL—

"entirely concurs in these views" (*i.e.*, apparently, those of Mr. Justice Straight).

393. MR. JUSTICE BRODHURST—

concurs in the remarks recorded by Mr. Justice Straight.

394. MR. DUTHOIT—

remarks that his opinion is restricted to the circumstances of the North-Western Provinces and Oudh.

395. THE LIEUTENANT-GOVERNOR AND CHIEF COMMISSIONER OF THE NORTH-WESTERN PROVINCES AND OUDH—

invites attention to Mr. Sparks' suggestions.

He suggests that it is very necessary to take every opportunity of consulting both the European and the Native community on the proposed legislation, through persons qualified to represent their feelings and interests, and that the best way of effecting this is to state points and proposals briefly and clearly for consideration by persons unaccustomed to handle legal questions.

396. LALLA MADAN GOPAL—

in submitting his memorandum, remarks that although some of the proposals which he has made may, if adopted, cause inconvenience at first, their adoption would be justified by the result.

397. LALLA GIRDHARI LAL—

concurs generally in the remarks submitted by Lalla Madan Gopal.

398. COLONEL GURDON—

specially commends to notice the memorandum of Muhammad Latif, Extra Assistant Commissioner of Jhang.

399. MAJOR-GENERAL PLAYFAIR, OFFICIATING COMMISSIONER, JABALPUR DIVISION—

endorses the opinion submitted by Lieutenant-Colonel Grace, Deputy Commissioner of Jabalpur.

400. THE CHIEF COMMISSIONER OF THE CENTRAL PROVINCES—

concurs generally in the views expressed in the Government of India's Resolution.

401. MR. C. A. ELLIOTT, CHIEF COMMISSIONER OF ASSAM—

expresses no opinion, as he is unfamiliar with the working of minors' law.

402. THE CHIEF COMMISSIONER OF COORG—

gives no opinion.

SIMLA; *The 12th August 1885.* F. G. W.

S. HARVEY JAMES,
Offg. Secretary to the Government of India.

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